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June 20, 1985

ORIG + book to DCI

The Honorable William J. Casey
Director
Central Intelligence Agency
Washington, D.C. 20505

Dear Mr. Casey:

The Nathan Hale Institute is pleased to provide you with this copy of U.S. Counterintelligence Today by Francis J. McNamara. Mr. McNamara is a recognized expert in the fields of intelligence and counterintelligence having served as Staff Director of the House Committee on Internal Security, as Executive Secretary of the Subversive Activities Control Board and as a combat intelligence officer during World War II. Mr. McNamara has written, using only unclassified sources, this timely treatise on the subject of foreign intelligence directed against the United States.

In this book you are quoted on pages 61-62, 72, and 23. Your comments on your mention and on the book itself are most welcome.

We look forward to receiving your response and we thank you for your participation.

Sincerely,

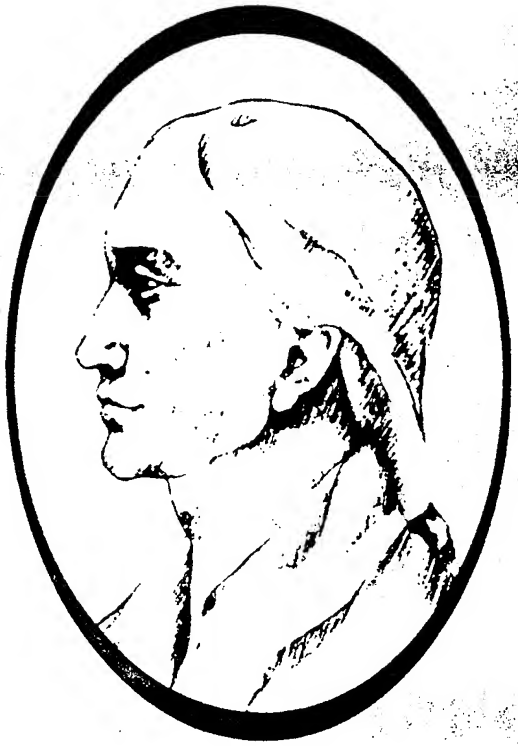
Mary Calhoun

Mary Calhoun
Director

C-158

U.S. Counterintelligence Today

By Francis J. McNamara



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Dep. Director
Central Intelligence Agency
Washington, D.C. 20505

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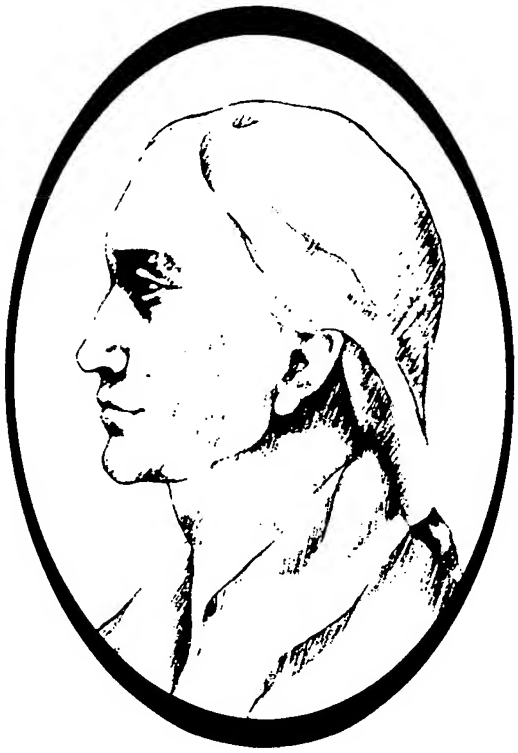

"I only regret that I have but one life to lose for my country." — Nathan Hale

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"I wish to be useful, and every kind of service necessary to the public good becomes honorable by being necessary. If the exigencies of my country demand a peculiar service, its claims to perform that service are imperious."

—Capt. Nathan Hale
1755–1776

The Nathan Hale Institute is an independent organization devoted to nonpartisan research in the area of domestic and foreign intelligence with particular emphasis on the role of intelligence operations in a free society. The Institute's principal purpose is to increase public awareness and stimulate debate and scholarly pursuit of important intelligence-related issues.

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U.S. Counterintelligence Today

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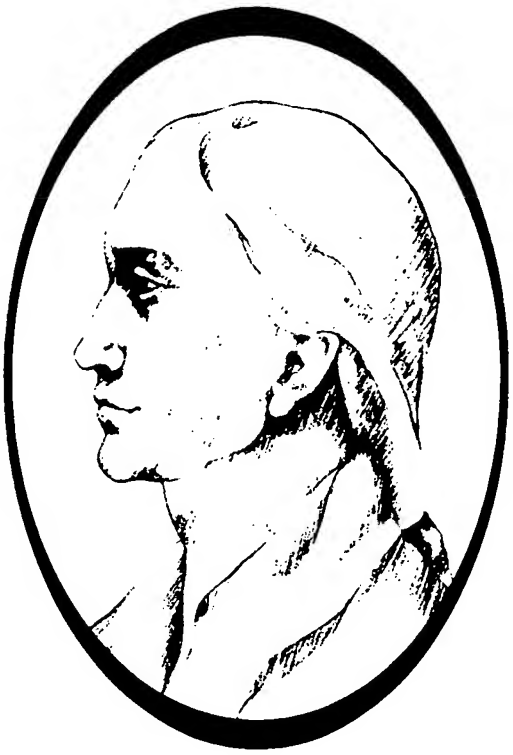

"I only regret that I have but one life to lose for my country." — Nathan Hale

THE NATHAN HALE INSTITUTE

Francis J. McNamara

A combat intelligence officer in Burma during World War II, Mr. McNamara has since devoted his activities overwhelmingly to the field of national security, holding key positions in the private, organizational and governmental sectors while doing so. In addition to other posts, he has served as Director of Research and as Staff Director of the House Committee on Internal Security, as Executive Secretary of the Subversive Activities Control Board and Executive Director of The Hale Foundation. He has lectured and written extensively on Communism, intelligence and related security matters.

U.S. Counterintelligence Today

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U.S. Counterintelligence Today

Intelligence and its inevitable offspring, counterintelligence, have both received a flood of unfavorable publicity in the United States during the past decade. As a result, the real need and value of counterintelligence as a national resource is little understood by the public and even by many government officials (including some actually involved in national security-intelligence matters). As a further consequence, this special kind of intelligence activity is all too often simply neglected, though it is an indispensable instrument in the protection of U.S. national interests.

This is because the last ten years of damaging exposure and virulent criticism of all aspects of U.S. intelligence activities—virtually always proclaimed to be based on noble national interests—have led to few serious attempts to analyze American counterintelligence in any balanced, comprehensive way. Its challenges, capabilities and shortcomings, successes and failures have not been scrutinized in terms of effecting functional improvements or greater public acceptance.

A thorough, overall analysis of this type is much beyond the limits of this study, which merely aims at pinpointing a few of the basic problems and weaknesses in the U.S. counterintelligence effort and attempts to suggest the steps necessary to correct them.

As a general rule, of course, matters of counterintelligence are closely held—as they should be—making it often impossible to demonstrate the quality of certain performances with detailed facts about particular case incidents. Despite this, enough is known publicly about certain factors powerfully affecting American counterintelligence to demonstrate that, unfortunately, *it cannot be what it should be*, that it is not being allowed to support national security in a way the American people have a right to expect, and that corrective action is crucial.

A clearer understanding of why and how these factors work against the best interests of the nation and its people may result from a general consideration of the concept of counterintelligence, and of its mission and support needs.

The Nature of Counterintelligence

There was a time when counterintelligence meant only what the word itself generally connotes—an effort to *counter*, to defeat, frustrate or offset the operations of foreign *intelligence* agencies. In those days it was thought of as counterespionage and nothing more, because the stock-in-trade of all intelligence services was to steal other nations' secrets. Intelligence agencies rarely engaged in other, non-information-gathering activities of the type now generally referred to as "covert action."

That old, simple concept is now outmoded—primarily because the Soviet intelligence services, the KGB, the GRU and their variously designated predecessors, have engaged in much more than espionage during the past 65 years. As operational arms of an aggressive revolutionary power, they have been involved not only in open as well as clandestine intelligence collection, but also in assassination, terrorism, disinformation, forgery, agent-of-influence operations and other varied forms of subversion and disruption.

More than 30 years ago, the chairman of the Senate Foreign Relations Committee, Senator Alexander Wiley, explained some of the changes that had already taken place. In his introduction to a report by the committee's special subcommittee on security affairs, he observed,

> The USSR has, in effect, revolutionized the entire intelligence and related fields in international relations. It has placed espionage on an assembly-line basis, graduating hundreds and thousands of agents, expertly trained as cadres in the interrelated skills of agitation, insurrection, espionage, sabotage, and subversion in countries throughout the world.[1]

The non-collection "intelligence" operations described by Senator Wiley are elements in a wide range of undertakings the Soviets call "active measures" (*aktivnye meropriyatiya*), actions taken by their agents and their collaborators to further Moscow's long-range goal of world domination and its immediate foreign policy manipulations towards that end. Some active measures are *clandestine*—so shrouded in secrecy that no one except the KGB officers and Communist party Politburo members involved know they exist. Some measures are *covert*, open developments in which only the Soviet hand is concealed so that they appear to be the independent actions of others. Finally some are completely *open* and visible (i.e., Radio Moscow broadcasts).

As a general rule, those active measures requiring the greatest secrecy are carried out by the KGB, while those that are more or less open are assigned to other Soviet government or party agencies. Moscow's control of a global network of non-ruling Communist parties, for example, is an active measure — one of the major forms of subversion in which it engages. It is, in fact, the most obvious form of subversion in the world today and has been for many years. Yet control of these parties is not, strangely enough, vested in the KGB.

Why not? Because these various national parties are "political" instruments openly engaged in serving the USSR's ultimate aim and immediate policy goals. As such they are the primary province of the one Soviet body that has the power to determine these goals—namely, the Politburo of the Central Committee of the Communist Party of the Soviet Union (CPSU). Because controlling these national parties and coordinating their activities so they serve Soviet interests is so monumental a task (there are over 70 pro-Soviet parties around the world today), the Central Committee long ago established a special arm—its International Department—to carry out this type of active measure and others

similar to it (i.e., directing major international Communist fronts such as the World Peace Council).[2]

The Kremlin's active measures are actually a form of warfare—for the most part internal—waged unremittingly against targeted nations by its unconventional Communist armies. The tremendous importance the Kremlin attaches to active measures in its global plans is indicated by the fact that it spends billions on them annually.[3] Given the realities of its perennially tight economy and its calculated ruthlessness, it follows that the Soviet Union must be convinced beyond all doubt that such measures are highly effective instruments for manipulating and undermining the nations it hopes to bring within its orbit.

The U.S., like all the other nations which are the targets of Soviet espionage and active measures, must take steps to unmask and defeat them. This country's response, like the Kremlin's offensive, has been open, covert and clandestine. The Voice of America (VOA) and the United States Information Agency (USIA) operate *openly* to counter Radio Moscow and other public Soviet propaganda operations. The Central Intelligence Agency (CIA) operates *covertly*, undertaking "special activities" (formerly "covert action") primarily to support U.S. national interests abroad, but also to counter Soviet active measures undertaken in foreign countries. The Federal Bureau of Investigation (FBI) and other agencies with counterintelligence functions (including the CIA) operate *clandestinely* both here and abroad to frustrate foreign espionage and intelligence-gathering activities in general and on the home front, to defeat Moscow's active measures which are carried on within the U.S.

Counterintelligence can thus no longer be conceived as limited to countering Soviet or other foreign espionage. Its duties have had to be greatly expanded. Basically, its function today is to protect this country from all those unconventional (non-military and non-diplomatic) threats to its security which are carried out, no matter by whom, in a covert or secret manner. U.S. counterintelligence, in other words, must now be concerned not only with specific KGB espionage and other information-collecting operations, but also with the activities of many other Soviet agencies and institutions which target this country for subversion. The same U.S. concern must apply, of course, to penetration by all other Communist bloc nations and by any other country that routinely or occasionally undertakes to undermine U.S. society.

There are two key concerns. Intelligence agencies wield enormous influence over world affairs because they provide the information upon which national leaders base their most vital decisions—those concerning their countries' military capabilities, the conduct of their foreign relations, and their internal security. Given the core role which intelligence thus plays in world events, it follows that as soon as a nation establishes a viable intelligence agency, opposing powers will try to penetrate it. Such penetration is extremely dangerous to any nation. It provides access not only to the country's most tightly held and sensitive secrets, but also to the specific plans that will determine its actions in the world arena. Detection of such intelligence agency penetration by foreign powers is therefore one of the most important of all counterintelligence functions.

Depending on the level at which it is achieved, penetration can lead to the following: acceptance of false or misleading information planted by the opposition; disclosure to the enemy of the identities of clandestine intelligence personnel and of intelligence plans, programs, techniques and targets; deliberately incorrect analysis of acquired intelligence; and, finally, to blocked or inadequate dissemination of vital intelligence to policymakers who should receive it. Any of these can have seriously adverse effects on a nation's defense

preparedness, on the successful conduct of its foreign affairs and the safeguarding of its internal security.

It is obvious then that without highly effective counterintelligence to protect it from penetration, any intelligence agency can become largely a waste of a nation's resources—time, money and effort—a danger rather than an asset, because penetration will be certain and the agency will end up serving others rather than the nation it is supposed to protect.

It follows from this that penetration of a *counter*intelligence agency is even more dangerous. It can block revelation of any penetration of the nation's vital intelligence arms, inform the enemy of security weaknesses or loopholes it can exploit, and, in addition, alert the enemy to dangers to its own activities and agents stemming from the penetrated agency's acquired knowledge, techniques and operations.

Counterintelligence is important to an effective intelligence program for still another reason. A nation's intelligence collectors and analysts—on whom its security depends—cannot do their best work unless they know they are backed up by a highly professional counterintelligence corps in which they have confidence. Without such confidence, they will always be plagued with doubts about the accuracy of the information they are collecting and interpreting. If they fear that what they are doing may do more harm than good, that they lack a vital safeguard, they will obviously be unable to deliver peak performance.

The U.S. counterintelligence problem is necessarily a global one because this nation has many installations abroad which collect and/or receive sensitive information and influence defense and foreign policy. The United States mainland, however, must be the major concern of its counterintelligence services because it is the main depository of the sensitive information hostile nations want to acquire, the place where all key security decisions are made and the control center of its intelligence services. While many government agencies in the U.S. are natural targets of hostile foreign intelligence agencies, the most important ones are obviously the White House, the State and Defense departments and our major intelligence services—the CIA, FBI, National Security Agency (NSA), and the Defense Intelligence Agency (DIA). Recent developments have also made institutions such as the Congress and the Department of Justice the focus of major interest by hostile agents.

Soviet penetration of U.S. intelligence/security services is the task of Directorate K, also known in the field as "Line KR," of the KGB's First Chief Directorate. Some years ago, the KGB instructed its Line KR officers in Western Europe:

> In accordance with the decision of the Collegium, it is imperative that you take immediate steps to utilize all available possibilities for acquiring or injecting our agents in the intelligence and counterintelligence services of the USA, U.K., German Federal Republic, and France. You and the Residency must clearly understand that without the presence of agents in the specified organizations...we will not be able to conduct operations successfully under difficult circumstances; and we are not in a position to guarantee the security of the work of Soviet intelligence services abroad and the safety of Soviet nationals [illegal agents] in the countries of your assignments.[4]

Such instructions would apply with special force to Line KR officers assigned to the U.S., which the Soviet Union has repeatedly described over a period of many years as its "main" and "number one" enemy. Unfortunately, there is evidence dating back many years, that the KGB has had some success in carrying out its penetration mission here.

General Walter B. "Beetle" Smith, former ambassador to Moscow and then CIA director, testified before the Committee on Un-American Activities on October 13, 1952. During the hearing he remarked, "I believe there are Communists in my own organization." [5] Smith also told the committee that "we have turned up abroad people within our own organization.... We have from time to time discovered them." [6]

At another point in his testimony he was asked if he knew who the Communists were in the CIA. He replied:

> I do not. I wish I did. I do everything I can to detect them, but I am morally certain, since you are asking the question, that there are. I believe that they are so adroit and adept that they have infiltrated practically every security organization of Government in one way or another. And it is our function to detect them where possible.[7]

Later in the hearing he added:

> My assumption would be that somewhere in some level there probably is an agent.... I would certainly, Mr. Chairman, be foolishly complacent if I acted on any other assumption than that some were there.[8]

Two employees of the supersecret National Security Agency (NSA), both of whom had access to top secret cryptologic information, defected to the Soviet Union in 1960. A 13-month investigation of their backgrounds and related matters by the Committee on Un-American Activities revealed that one of them, William H. Martin, was a sexual masochist who had practiced bestiality and had associated with Communist Party members at the University of Illinois, when sent to study there as an NSA employee in 1959, the year before he defected. It also revealed that the other employee, his close friend, Bernon F. Mitchell, was a homosexual who had secretly travelled to Cuba with Martin in December 1959 in violation of NSA regulations, and that both men were known to their co-workers at NSA as being highly critical of the U.S. and complimentary toward the Soviet Union.

Last year, for the first time in FBI history, one of its special agents was formally accused of spying for the Soviet Union. On October 12, 1984 a federal grand jury in Los Angeles returned a 13-count espionage, bribery and conspiracy indictment against Richard W. Miller, a 47-year-old, 20-year veteran of the Bureau, and Svetlana Ogorodnikova, a 34-year-old self-described KGB major, and her former husband, Nikolai, from whom she had been legally separated since September 1982. A Soviet vice consul in San Francisco, Aleksandr Grishin, was also named in the document but not indicted because he enjoyed diplomatic immunity.

Miller, assigned to the Los Angeles office of the FBI, had been working in foreign counterintelligence since 1982. He admitted a "personal" relationship with Svetlana and his agreement to turn classified FBI documents over to her in return for $65,000 in gold and cash. The Ogorodnikovas, born in the Soviet Union, had emigrated to the U.S. in 1973 and had permanent resident alien status. She was on welfare at the time of her arrest; he was earning about $24,000 per year as a meatpacker. Some of his salary went for her support and that of their son.

An FBI affidavit stated that one document classified "secret" which Miller had given Svetlana "would give the KGB a detailed picture of FBI and U.S. intelligence activities, techniques and requirements."

A number of earlier incidents had also caused concern about possible KGB penetration of the FBI. The late William C. Sullivan, a 30-year Bureau veteran who retired in 1971, had headed its Domestic Intelligence Division during the years 1961-70 and was writing

(with the help of a reporter) a book about his Bureau career when he was killed in a 1977 hunting accident. As published two years later in his and the reporter's name, the book and a magazine article based on it contained distorted accounts of two of the incidents. In one, a Soviet defector during the '60s had allegedly informed the FBI that an agent in its Washington field office had sold the Soviet Embassy three top secret documents on U.S. naval operations; that the defector did not know the agent's name and the Bureau never discovered who he was. Sullivan reportedly commented, "For the first time my worst fears seemed to have come true; the Russians had bought one of our men." [9]

The other case involved a claim that someone in the counterespionage unit of the N.Y. FBI office had been working as a Soviet agent and had Sullivan asserting that "At the time I left the FBI in 1971, the Russians still had a man in our New York office and none of us knew who he was." [10]

Actually, the Washington office case was not a KGB penetration and the special agent involved was known to the FBI. The New York case concerned a possible penetration that was taken very seriously, with extensive effort made to resolve the question. No conclusive evidence was developed, however, and the possible penetration was neither proved nor disproved.

In light of the above facts, it is hardly surprising that former CIA director Richard Helms, one of this country's most experienced intelligence professionals, would state in 1978,

> Counterintelligence is terribly important, because without an effective counterintelligence program—both in the CIA and the FBI—the problem of double agents and infiltrators is insurmountable.[11]

Domestic "Political" Intelligence Essential

An Interagency Intelligence Study of Soviet active measures submitted to the House Intelligence Committee by the CIA in 1982 stated:

> The primary target of Soviet active measures is the United States, which the Soviet Union has long regarded as its main opponent and the principal obstacle to carrying out its policies.[12]

It has also been recognized for years, of course, that the U.S. is also the prime target of Soviet *espionage* efforts.

How does Moscow achieve its espionage and active measures goals in the U.S.? *Through Americans.*

Like all non-Communist nations of any importance, the U.S. has had many secrets stolen by the KGB and other Communist bloc intelligence services and, as indicated, its intelligence services have been penetrated. So far as is known, however, no one who was actually a national of any Communist power, serving as an agent of its intelligence service, has ever acquired direct lawful access to classified information through employment in any U.S. government agency.

There is always the American link, the U.S. citizen who performs the act of theft for the foreign espionage agent, the government employee or contractor who has access to the

information desired and purloins or copies it for the foreign spy.

The same is true in regard to Soviet active measures. Soviet and other Communist bloc nationals on the payroll of the International Department, intelligence services or other agencies do not openly sit on any ruling bodies of the U.S. Communist Party, its fronts, or of any U.S. affiliates of Moscow's international fronts. Neither do they publicly control other agitation and propaganda operations in this country which are obviously directed by the Soviets and which serve Soviet ends. *In all cases, again, there is the American hand*—the Communist, the collaborator, fellow traveler, dupe or "useful idiot" who carries out such work for them.

Surveilling Americans and collecting domestic intelligence are, therefore, obviously essential to any effective counterintelligence. They are the key actors in the Kremlin's undermining projects of all types carried out in this country.

It would appear from this that all Americans with access to sensitive information would be the key concern of U.S. counterintelligence agencies in their efforts to combat hostile foreign espionage. In one sense, of course, they are. It must be recalled, however, that all such people have (at least in theory) undergone thorough pre-access security checks, renewed periodically if they have access to the most sensitive classified information, and that for decades the overwhelming majority of them have demonstrated their complete loyalty.

To subject all of those who have been cleared to continuing suspicious surveillance merely on the basis of their access would therefore be unjust. It would also be counterproductive, adversely affecting morale. Moreover, it is estimated that more than 2.5 million federal employes, exclusive of those in the CIA and NSA, have access to information classified secret or higher, and that the same is true of some 1.5 million contractor employees. Anything like ongoing surveillance of over 4 million people would be a physical impossibility, far beyond the capability of all U.S. intelligence units combined, even if it were desirable.

Surveillance of those with access must therefore be limited and selective, based on information developed by counterintelligence units about hostile agency plans and targets, the actions of known foreign agents, or actions on the part of individual employes which arouse suspicion.

Identified foreign agents should, of course, be presumed guilty and subjected to the most thoroughgoing surveillance possible. In their need to continue developing and managing spies, they must have contact—through "cutouts," "dead drops" and other means—with their U.S. collaborators. Such surveillance will usually, sooner or later, reveal the links in the communication chain and the identity of their American spies. Suspected hostile agents, of course, must also be surveilled until their role is definitely determined.

The most effective (and difficult) course is "turning" a hostile country's known agents, converting them into double agents. Probably one of the greatest counterintelligence coups of all time was achieved by British counterintelligence through this technique during World War II. Sir John Masterman, historian, author, and Vice Chancellor of Oxford University who worked during the war with the section of MI-5 (Britain's "FBI") which handled double agents, has since written of what he admits is "a staggering claim," namely, that from the fall of France in June 1940 until British armies returned to France in 1944, "*we actively ran and controlled the German espionage system in this country* [England]" (his emphasis).[13]

The results of successful operations in this field are obvious. As Masterman summarized it: "They [the Germans] gained no good whatever from their agents, and they did take from them a very great deal of harm." [14]

He concluded that, in trying to cope with hostile espionage,

> it is of paramount importance to keep a firm hold on the enemy's own system of agents and informers.... In peace as well as in war a carefully cultivated double agent system is the safest and surest weapon of counterespionage.[15]

The KGB itself has provided a clue to the types of people in whom it is particularly interested. It uses an English word to remind its officers of the appeals they should use in their recruiting efforts. The acronym is "MICE"—for *M*oney, *I*deology, *C*ompromise and *E*go.

Money has become an increasingly important factor in U.S. espionage cases during the last quarter century. In virtually all recent spy incidents, Soviet agents have paid substantial sums to the Americans who purloined information for them. More than anything else, they have been business deals with, in some instances, the American making the original approach to the Soviets. Greed and need have been the motivators. Nowadays officers and agents of the KGB and GRU (Soviet military intelligence) look for the government or contractor employee with access who is a compulsive gambler or has other serious money management problems. The contractor whose firm is having financial problems also interests them. They can be very generous if the information potentially available is "hot" enough.

Ideology has always been a powerful human motivator, although it has declined drastically as a factor in current espionage cases (but not because it has lost its influence).

A person obviously acts as he believes. A left wing ideologue is always a potential recruit for any type of Soviet operation. The USSR has capitalized on this fact in both the espionage and active measures fields since its earliest days. It is still the principal weapon in recruiting leaders and supporters in active measures, but it is used only sparingly for spying. A recruit need not be a Communist Party member or active "fronter." The individualistic true believer who eschews such open activity for any one of a number of reasons is also a promising candidate and, not having a public or documented record of pro-Soviet activity, is generally a safer bet.

The committed Communist is dedicated to the party, but even more dedicated to his ideological homeland, the Soviet Union (or perhaps Red China or Cuba). Serving it directly is more appealing and satisfying than mere party work. It fulfills the ego as well as the ideological desire.

For these reasons the U.S. Communist Party was for years a major recruiting ground for Soviet spies. The same was also true of other parties.

Moscow called a halt to this general practice in 1952, however, according to the late Wladyslaw Tykocinski, head of the Polish Military Mission in Berlin when he defected to the U.S. in 1965. A veteran of almost 20 years service in the Polish Ministry of Foreign Affairs, he had also served for six years, 1946–1952, as an intelligence officer of Z–2, Communist Poland's military intelligence service, with diplomatic titles as cover for his espionage. Tykocinski explained why the practice of recruiting from Communist parties had been stopped, pointing out that

> after some mishaps, namely, when some of them were caught and it compromised the Communist parties, there was an order sent from Moscow through the different services

which cooperated with the Soviet services not to use the Communist parties, only to use the party when it was safe or necessary. For instance, I had to use the party when I was in Italy because I had a special problem.[16]

His testimony pinpoints the great importance Moscow attaches to local Communist parties (as instruments of active measures) and its desire not to have their "good name" compromised. At the same time it indicates that the Communist bloc has not called a complete halt to the practice of using party members for special espionage, though it is now doing so only on a much-reduced scale.

Communist parties in all countries have the mission of being active in national political affairs, not only to influence domestic developments to the best of their ability but, more importantly, to have an impact on national defense and foreign policy. Communist fronts have the same mission, their primary function being to serve both as advance and backup agencies for the party in the active measures operations it carries out for Moscow. The 1982 Interagency Intelligence Study of Soviet active measures reported, "Political influence operations are *the most important*, ambiguous, but least visible of Soviet active measures." (emphasis added)[17]

Given this fact and the fundamental duty of Communist parties and their fronts to be politically active, appropriate surveillance of them (and their hidden agents) inevitably involves counterintelligence agencies in the collection of domestic "political" intelligence.

Counterintelligence surveillance, however, must extend beyond the party and its fronts to other ideologically sympathetic groups. This need is based in part on the fact that Moscow has for years pushed "united front" tactics to implement active measures more effectively. This means that Communist parties, acting for and by direction of the Soviet Union and in its interests, do everything in their power to influence other organizations to join in their activities, thus converting them into instruments of Soviet policy though they are not technically controlled by the party. This may be accomplished by heavy infiltration of the target group by party members or by direct appeals to its leaders by open Communists (the united front "from below" and "from above"). No realistic assessment of a nation's security status can be made without knowledge of the extent to which this tactic is being successfully implemented at any given time and on what issues.

Additionally, ideologically sympathetic groups, no matter the extent of Communist united front efforts at any given time, will often naturally desire to cooperate with and assist in the achievement of basic Soviet aims. The Socialist Workers Party (SWP), for example, the largest Trotskyist communist group in the U.S., is a "dissident" party, highly critical of the Communist Party, USA (CPUSA) and of Moscow on many issues. Yet, for the past 20 years, it has been vigorously promoting CPUSA and Soviet objectives on many issues in both a cooperative and competitive fashion. To illustrate: The Fair Play for Cuba Committee was a highly effective Communist propaganda instrument in the U.S. during and after the period when Castro seized control of Cuba. It was created by the CPUSA, but so "supported" by the SWP that the Trotskyists eventually managed to gain control of some of its chapters and managed them basically as Moscow desired, i.e., to help strengthen and solidify Castro's hold on Cuba. The CPUSA was not happy that it had lost control of these chapters to the "Trots", but it was obviously something it could tolerate without great difficulty—because the Trotskyists shared its and Moscow's concern for Castro's good fortune and did all they could to promote it.

Similarly, the Student Mobilization Committee, the largest and most effective campus protest group during the Vietnam War, was originally set up by the CPUSA. Within three years, however, the SWP's youth arm, the Young Socialist Alliance, had taken it over.

Despite this "loss" by the CPUSA, the Student Mobilization Committee continued to serve fundamental Soviet (and North Vietnamese and, of course, Vietcong) interests throughout the war—simply because the SWP and its youth arm are also Communist organizations and therefore worked for the defeat of the U.S. when it was trying to prevent the takeover of Vietnam by Communist forces.

Espionage and sabotage as well as active measures, are involved in this issue of fringe organizations. The Venceremos Brigade (VB) was created in 1969 by the terrorist Weatherman faction of Students For a Democratic Society (SDS) for the ostensible purpose of helping Castro harvest his sugar cane crop. Thousands of young Americans went to Cuba under its auspices in the years that followed. There they were indoctrinated in Marxism and deluged with pro-Castro propaganda. Selected members of each contingent were also trained by Cubans and North Vietnamese in guerrilla warfare and terrorism and in the use of weapons and explosives.

Castro's intelligence service, the Directorate General of Intelligence (DGI) — which, western intelligence agencies agree, is controlled by the KGB — showed great interest in the young American brigaders. A 1981 federal court exhibit based on highly classified FBI files, with the Carter administration Justice Department attesting to its accuracy, contained the following statement:

> The DGI interest in the VB is an extension of its overall policy relating to the collection of intelligence on the U.S., its primary target. The DGI considers recruitment of VB members. . . as one of the primary means through which intelligence can be collected on the U.S.
>
> The DGI believes that it is to their advantage to establish and maintain contact with organizations, groups and individuals who are *sympathetic to the Cuban Revolution and who are disenchanted with the present conditions in the U.S.* [there are many such, including some not enchanted with Moscow — author], and sees the VB as such a group.
>
> The ultimate objective. . . is the recruitment of individuals who are politically oriented and who someday may obtain a position, elected or appointed, somewhere in the U.S. government, which would provide the Cuban government with access to political, economic, or military intelligence. . . . The DGI also seeks individuals among the VB who can fulfill operational support roles; that is, who wittingly or unwittingly would serve as an accommodation address or serve in some other intelligence support capacity. (Emphasis added)[11]

DGI (KGB) interest in the VB and similar groups has been indicated, the exhibit revealed, by contacts with them within the U.S. as well as in Cuba.

A considerable number of former leaders and members of the radical Marxist youth groups of the sixties, never directly associated with the Communist Party, have since gone into politics and obtained government positions on the federal, state and local level. The electoral route is particularly effective because it complicates both surveillance and counteraction (some present members of Congress, for example, could never obtain clearance for sensitive executive branch posts, yet are elected repeatedly to positions giving them access to extremely sensitive information). One survey of the sixties radicals stated that more of them had gone into two fields, law and teaching, than any other occupations. The opportunities for influence in teaching are obvious, and law experience is often an entree to the higher levels of government service.

Not only the SDS-Weatherman faction and the VB but other groups such as the Black Panthers have received training abroad in the use of weapons, explosives and guerrilla warfare. The need is apparent for continuous intelligence about such groups and their members in any efforts to frustrate terrorism and sabotage. As so many incidents abroad

have demonstrated during the past decade, it is also essential to any realistic effort to cope with assassination attempts. The terrorist acts and assassinations that have plagued the non-Communist world since the late 60s have been overwhelmingly the work of left ideologues, with ultrarightists of the same type (who should, of course, also be surveilled) playing a decidedly secondary role.

It is almost impossible to list or describe precisely just which domestic groups and individuals should be subjected to counterintelligence surveillance based on ideology. There is no rigid formula that can practically be incorporated into any law, guideline or regulation specifiying who can or should, or cannot be, investigated at any given time. As a general rule, any individual or group is suspect which, by word and action, indicates adherence to political philosophies or to foreign powers whose form of government is alien to that called for by the U.S. Constitution. Public information will often indicate whether ongoing surveillance of such a group is called for; when it does not, low-level investigation will frequently answer the question of whether it is dangerous or significant enough to merit continuing attention.

Realistically, such determinations should be made by experienced counterintelligence professionals. They are the people best qualified to judge such matters, not only on the basis of their overall knowledge of subversion in general but on intelligence of the moment from public and clandestine sources about developments and changes in various movements and their adherents and the activities of hostile foreign powers and agents in different fields.

To illustrate: The Weather Underground Organization, the major U.S. terrorist group of the early 1970s which grew out of SDS, was under intense FBI investigation at that time, as it should have been. It had claimed responsibility for a series of bombings and more than a score of its leaders were fugitives from justice, wanted for various crimes of violence. Yet SDS had emerged in 1959 as a revitalization of a largely dormant, almost defunct old-line Socialist youth organization, the Student League for Industrial Democracy, which traced its origins to the Intercollegiate Socialist Society (ISS), founded in 1905. After the ISS changed its name to League for Industrial Democracy in 1921, its campus affiliate was called the Student League for Industrial Democracy (SLID). Openly socialist and non-violent, SLID was never considered subversive. It operated under that name until Tom Hayden and a number of other radical campus activists took it over in 1959 and renamed it the Students for a Democratic Society (SDS). Originally anti-Soviet as well as anti-U.S., SDS barred Communists from membership. Naive as well as radical, it was easily infiltrated by Communists anyway (CPUSA, SWP and PLP, the latter the Maoist Progressive Labor Party). The Communists soon gained such influence in the SDS that in 1965 they succeeded in having its resolution barring their type from membership reversed. The gates were wide open. By 1968, the PLP faction was strong enough to make a bid to take control of the group, but failed (the rival Communist factions defeated it). At the 1969 national convention, the Weatherman Communists took over the organization.

Should SDS have been under FBI investigation when it emerged under that name in 1959? No. At what point should the FBI have begun surveilling the group? Because it had the CP, SWP and PLP under investigation and was aware of what they were doing, it was obviously in the best position to make that judgment. No one else had as much information as the Bureau had about the operations of the three organizations that took over the SDS and destroyed it.

In considering the question of who and when, it is worth remembering that John Doar, Assistant Attorney General in charge of the Civil Rights Division of the Department

of Justice in the Johnson administration, severely criticized FBI director Hoover for taking too narrow and limited a view of the types of targets that should be subjects of counter-intelligence concern. In a September 14, 1967, memo to Attorney General Ramsey Clark, written at a time when SDS, the Black Panthers, and various other Marxist and violence-prone groups were afflicting the country with racial and political rioting, Doar hit the FBI Director for not having taken "a broad spectrum approach" to domestic intelligence collection, instead of having "focused narrowly" on "traditional subversive groups" and those suspected of having committed specific crimes.[19]

Subversion which is completely domestic in nature, having no connection whatsoever with any foreign power, is always a possibility. Quite common in foreign countries, it has been rare in this country. For decades the great majority of "domestic" undermining operations in the U.S. have had a foreign connection. In the '30s, the connections were with Nazi Germany, Fascist Italy, Imperial Japan and the Soviet Union. President Franklin D. Roosevelt was so concerned about the growth of these movements that he secretly directed the FBI to begin collecting intelligence on them in 1936; and in 1939 he made this FBI mission public, at the same time asking all law enforcement agencies in the U.S. to cooperate in the effort by turning over to the FBI all information they had on subversive activities.

Since the end of World War II, the first three of the above sources of foreign-connected subversion have disappeared from the scene, to be replaced by Castro's Cuba, Peking, and a string of so-called "Third World" Marxist states which, in varying degrees, have thrown their lot in with the Soviet Union. Moscow continues its undermining intervention in U.S. internal affairs and, by reason of its power and experience in such matters, dominates the scene.

The foreign ties that have for so many years charcterized "dissident" movements in the U.S. were illustrated in a letter written by Richard Helms, Director of Central Intelligence, to FBI Director Hoover on March 20, 1970, on the subject of "New Left" (SDS, anti-war and other '60s radical groups) and "Racial Matters" (violent racist groups such as the Black Panthers). Helms' letter read in part:

> The increasingly close connection between these forces in the United States and hostile elements abroad has been well established by both our agencies. I feel it would be in our mutual interest to determine how we can best employ wisely our limited manpower, knowing that this problem, which embraces bombings, hijackings, assassination, and the demeaning of law enforcement officers, is international in scope.[20]

The Supreme Court also recognized the typical foreign connection in its 1972 *Keith* decision, in which it held that a warrant was required before a completely domestic group could be wiretapped for national security (intelligence) reasons, i.e., in a case in which there is, to use the Court's words, "no evidence of any involvement, directly or indirectly, of a foreign power."

The Court defined a domestic organization narrowly, as one "composed of citizens of the United States. . . which has no significant connection with a foreign power, its agents or agencies." Apparently aware of the nature of most of the "activist" groups under surveillance at the time for valid reasons, it continued:

> No doubt there are cases where it will be difficult to distinguish between 'domestic' and 'foreign' unlawful activities directed against the Government...where there is collaboration in varying degrees between domestic groups or organizations and agents or agencies of foreign powers.[21]

The implication was clear. When an organization of U.S. citizens develops a "significant" connection with a foreign power, collaborating with it or its agents or agencies in a meaningful way, it changes its nature to the extent that it becomes a proper subject of counterintelligence monitoring *under standards applying to foreign nations*, with no warrant required for the use of intrusive surveillance techniques such as wiretapping.

To put it bluntly, the Court held that such groups were no longer completely "American" and therefore lost some of the Constitutional protections normally enjoyed by U.S. citizens and groups (specifically, the protections of the Fourth Amendment). It should be noted, too, that statutory definitions of a "foreign power" include not only the formal ruling government entity of a foreign nation, but also any agency or sub-unit of it, and also foreign political parties or factions, terrorist groups, and organizations controlled by foreign powers.

By not declaring just what it considers a "significant" connection and by referring to the difficulty in sometimes distinguishing between domestic and foreign anti-government activity, the Court created something of a legalistic gray area which will presumably be clarified only in future decisions in which it deals with challenged warrantless surveillances.

While the ideological appeal works powerfully for the KGB and all hostile foreign powers, it also works powerfully, in one sense, for the U.S. government and its counterintelligence agencies because foreign intrusion into U.S. internal affairs is not tolerated by the Constitution. In a 1961 decision upholding the right of the government to compel the registration (self disclosure) of any group substantially directed, dominated or controlled by a foreign power, the Supreme Court reiterated a holding it had handed down in 1889:

> To preserve its independence, and give security against foreign aggression and encroachment, is the highest duty of every nation, and to attain these ends nearly all other considerations are to be subordinated. It matters not in what form such aggression and encroachment come.[22]

The 1961 case involved the Communist Party, basically acting as an instrument of Soviet active measures. The Court also ruled on the meaning of the words "substantially directed, dominated, or controlled" in the statute at issue. It said:

> If the Soviet Union [or any other foreign nation] directs a line of policy and an organization voluntarily follows the direction, the terms of this statutory definition would be met.[23]

In the light of this definition of actual domination and control, the lesser "significant connection" standard can be rather easily met for counterintelligence purposes.

Justice William Douglas, the most liberal member of the Court at the time, dissented in part but joined the majority in rejecting the claim that the statute violated First Amendment "political" rights:

> When an organization is used by a foreign power to make advances here, questions of security are raised beyond the ken of disputation and debate between the people resident here. Espionage, business activities, formation of cells for subversion, as well as the exercise of First Amendment rights, are then used to pry open our society and make intrusion of a foreign power easy. These machinations of a foreign power add additional elements to free speech just as marching up and down adds something to picketing that goes beyond free speech.[24]

For these reasons, Douglas said, the statute's compelled disclosure requirement "is in line with the most exacting adjudications touching First Amendment activities." [25]

If, as this and other decisions indicate, the U.S. government is empowered to *act against* groups with foreign ties, it follows that it has the power—and even the duty—to collect information about them. Doing so does not violate fundamental constitutional rights and liberties. Domestic "political" intelligence collection therefore is proper.

Compromise, as a KGB "appeal" to potential recruits, is simply another word for blackmail, which it has routinely used for espionage purposes since its earliest days. It explains why, particularly behind the Iron Curtain, so many prostitutes (male as well as female) are on the payroll of the KGB. It is a practical application of the age-old truth that anyone who engages in conduct deemed reprehensible by the society in which he lives is vulnerable and will do almost anything to avoid exposure.

This fact also explains why Executive Order 10450 of President Eisenhower of April 27, 1953, which still governs the security screening of federal employes, includes, among the factors to be considered in employment determinations, "Any criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, habitual use of intoxicants to excess, drug addiction, or sexual perversion." It also includes "Any facts which furnish reason to believe that the individual may be subject to coercion, influence, or pressure which may cause him to act contrary to the best interests of the national security." (Sec. 8 (1) (ii) and (v).

Particularly in relation to jobs involving access to sensitive information, the government tries to exclude those vulnerable to compromise. Pre-screening, of course, is not always perfect and people can change. All of this explains why counterintelligence must sometimes collect information about people's "private" lives.

Ego is so broad a subject—and so apparent—there is no need to comment on it at length. After money, ideology and compromise, it is one of the most potent levers of human action. The conceited, strongly self-centered person rarely has strong ethical inhibitions or noble or idealistic commitments. Everything is self, except self-sacrifice. Unless they achieve high position (and they often don't), egoists usually consider themselves unjustly treated, their superior talents not recognized or appropriately rewarded and, along with their ambition to be recognized and important, frequently develop a desire to strike back at the society or institution that has denied them what they believe they deserve. Moscow can offer them opportunities to satisfy these desires.

The "Most Important" Counterintelligence Mission

It would be difficult to postulate which of the three basic missions of counterintelligence is the most important—uncovering and frustrating espionage efforts, blocking penetration of intelligence/counterintelligence agencies, or countering Soviet active measures.

Espionage can do tremendous damage, but its full, worst effects are usually felt only in war time, and then from generally current spying. In other periods, the damage done can usually be repaired over time (by development of new weapons and counterweapons, by

weathering crises despite losses through espionage, etc.). In sentencing A-bomb spies Julius and Ethel Rosenberg to death on April 5, 1951, Judge Irving Kaufman said:

> I consider your crime worse than murder. Plain deliberate contemplated murder is dwarfed in magnitude by comparison with the crime you have committed. In committing the act of murder, the criminal kills only his victim. . . . [Y]our conduct in putting into the hands of the Russians the A-bomb years before our best scientists predicted Russia would perfect the bomb has already caused, in my opinion, the Communist aggression in Korea, with the resultant [U.S.] casualties exceeding 50,000 and who knows but that millions more of innocent people may pay the price of your treason. Indeed, by your betrayal you undoubtedly have altered the course of history to the disadvantage of our country.[26]

Whether or not Judge Kaufman was correct in his assessment of the Rosenberg's espionage as a key factor in the launching of the Korean War in 1950 (eventual total U.S. casualties: over 157,000, with more than 54,000 deaths), the remainder of his statement was factual: USSR possession of the atomic bomb years before it otherwise would have had it undoubtedly influenced its actions vis-a-vis the U.S. and in the world arena generally—to the considerable detriment of this country. More importantly, *millions of innocent people might have died because of the theft.*

But they did not—and still have not. Moreover, at this time, the 40-year-old theft's impact on casualties in a present-day nuclear war would be nil. Time and vast changes in weaponry have wiped out the immediate, terrible potential threat their betrayal posed. Thus, if one rejects Kaufman's (unproven) opinion about any causal relationship in regard to the Korean War, not a single person has died as a direct result of Moscow's theft, via the Rosenbergs, of the secret of the A-bomb.

Yet the damage that flowed from their act is still very real, though not precisely calculable. The USSR's successful explosion of an A-bomb in 1949, rather than some years later, unquestionably reduced the deterrent effect this country's sole possession of the bomb would have had on Soviet actions for some indeterminable period of years after 1949, thus encouraging the USSR to undertake a variety of aggressive acts it would otherwise not have taken. It is impossible to estimate the overall harm done or how many people suffered—or even died—from these actions, but that such results followed cannot be doubted.

There is another consideration that must be borne in mind in attempting to weigh the dangers that flow from Soviet spying: a number of reputable studies indicate that much of the Soviet Union's present military strength and its real economic might (even though its economy is poor) is built on Western, particularly U.S., technological know-how. While much of this knowledge has been handed to Moscow on a silver platter by the Western powers, it is also true that a significant portion of it has been "acquired" by agents of the KGB and other bloc spies—without whose contributions, the Soviet Union, as a much weaker nation, would not be the world threat it is today, and would have been incapable of various aggressive, life-destroying actions it has taken in many parts of the world in recent decades.

Again, we are faced with the impossibility of anything resembling precise computation of the harmful impact of foreign espionage on literally millions of people, but this fact should not deter us from facing up to the reality of the danger it has posed—and still poses—to free people everywhere.

Just how much harm has been done by hostile penetration of and influence within U.S. intelligence and counterintelligence agencies—as distinguished from direct theft of secrets? We do not know and have no way of judging. Because KGB penetration of high

levels of NATO headquarters in Europe has been documented, along with penetration of the intelligence/counterintelligence services of virtually every nation of Western Europe, it would (as Gen. "Beetle" Smith said) be foolishly complacent to believe it has not had some success here. Certainly, some employes of U.S. agencies have been dismissed over the years for security reasons. Who and why is not a matter of public record—for understandable reasons. Speculation about a Soviet "mole" in the CIA (or other agency), as irresponsible and ridiculous as some of it has been, is founded on genuine possibility or likelihood. The fact that none has been uncovered so far could be an indication of inefficiency in U.S. counterintelligence, rather than in the skill of the KGB.

Once more we are faced with an imponderable, but the great damage that could be done by undetected moles can be readily understood.

Many people discount the importance of active measures. Espionage is a much "sexier" subject. It always makes good newspaper copy and is the theme of many novels, films and TV series, most of which grossly distort its reality. Conversely, active measures are rarely given much attention, either fanciful or realistic.

Yet an objective look at world events since the end of World War II compels the conclusion that these measures may have had far worse impact on human affairs than espionage has ever had or will likely have in the future. Thousands of examples to illustrate this could be cited, but summary treatment of one fairly recent active measures operation will suffice to make the point.

Most military authorities would agree that if the Vietnam War had been a traditional, completely military engagement from beginning to end, the combined U.S.-South Vietnamese forces would have defeated the Vietcong-North Vietnamese forces, despite the massive aid the latter received from Moscow and Peking. To a major degree, active measures in South Vietnam, the United States and Europe made the difference, giving victory to the Communist forces by attacking their opponents from the rear.

This country's full-scale military commitment to Vietnam was originally supported by a large majority of Americans, according to polls of the period (which also revealed high ratings for President Lyndon Johnson's conduct of foreign affairs). The commitment was followed shortly by the emergence of a so-called "anti-war" movement in this country (whose leaders were not at all opposed to *Communist* wars of aggression). Simultaneously, related operations surfaced—anti-draft, anti-ROTC, and even disruption within the military ranks—all of them with Communists and Marxists playing key roles. All these forces combined in a concerted campaign of opposition to the U.S. effort to block the takeover of another country by Communist forces.

The domestic opposition to the U.S. war effort was supplemented by Communist infiltration of the South Vietnamese government and other undermining active measures there, and also by the development of complementary "peace" movements in Canada, Japan and virtually every nation in Western Europe.

Considering the youth, inexperience and naivete of those who comprised the bulk of these movements, the scope, coordination and effectiveness of the operation was truly remarkable. In terms of its complex organization, that operation bore the stamp of communist professionalism in every aspect of control. Event after event was staged here and in other nations—teach-ins, demonstrations, marches, the circulation of petitions (supplemented by bombings, sabotage, "trashing," rioting and other acts of violence). Massive amounts of propaganda were produced and distributed—flyers, posters, pamphlets, newsletters, and films. On the same day, huge rallies opposing the U.S. role in Vietnam would take place in Paris, Rome, London, Berlin, Tokyo and other major

capitals. In 1969, the domestic operation staged in Washington was the largest protest demonstration ever held in this country.

The U.S. was the target of everything, everywhere. Day after day, the news was flooded with accounts of apparent "grassroots" opposition in all parts of the influential world to U.S. policy in Vietnam.

The all-pervasive Communist nature of the campaign was clearly revealed in numerous statements by its leaders; in congressional and court proceedings; in key activists' open meetings with, and statements of support for, the Vietcong and North Vietnamese leaders; and by the activists' past records. And what power on earth, other than the Kremlin, has an apparatus at its disposal that could so competently initiate and coordinate such events on a global scale?

Within a few years every poll taken in the U.S., without exception, revealed a complete reversal of the American public's attitude toward the war, with a large majority now opposing it and criticizing the President's management of foreign policy. That change in public opinion, basically, decided the outcome of the war.

Did these active measures alone bring about this reversal of opinion with the results that followed?

Of course not. Other factors influenced the eventual U.S. withdrawal, helping to make the outcome virtually certain: the length of the conflict, with its ever-growing casualty lists; political decisions interfering with the military conduct of the war; and finally the disparate attitudes, thought-processes of key decision makers, and so forth.

But there is also no question that this massive Soviet active measures operation had important, perhaps decisive, impact. Had it not been undertaken none of the thousands of developments it initiated would have taken place and the war would likely have had a completely different ending.

General Vo Nguyen Giap, the North Vietnamese military commander, made no mistake when he thanked the U.S. "peace" movement for the help it was giving him during the war. Gen. William Westmoreland was not in error when he pointed out that the movement was hurting the U.S. effort. The U.S. Communist Party was later fully justified in boasting of its contribution to the Communist victory in far off Southeast Asia—and Moscow no doubt quietly gloated that its active measures had again proved their worth.

The precise effects of such agitation and propaganda and other active measures are as difficult to measure as those of espionage. But there is every reason to believe that the Soviet anti-Vietnam War operation significantly affected, for example: the outcome of a U.S. national election by influencing an incumbent President not to run again; the Communist victory in Vietnam that created a national security problem in Southeast Asia that will plague the U.S. for years to come; a good portion of the war's 210,000 U.S. casualties, including more than 58,000 deaths; hundreds of thousands of war and post-war casualties among the Vietnamese; many of the more than two million slaughtered in the "gentle land" of Cambodia, following the fall of South Vietnam.

This massive Soviet active measure also helped significantly in the development of the so-called "Vietnam syndrome," a national morale problem that for years crippled formulation of a vigorous, effective U.S. foreign policy. There is no telling just when its adverse impact will end and how much damage will have been done by that time.

Who did the greater damage to the United States and the people of other free lands: the Rosenbergs who died in the electric chair for the criminal act of espionage, or the "law-abiding" Communist "peace" active-measure agents and their collaborators, dupes

and "useful idiots" who merely exercised their First Amendment rights to protest a U.S. policy they opposed?

Such active measures, like espionage, are staple Soviet instruments. Like espionage, they have been carried out in all parts of the world for 60 years. Like espionage, their impact is incalculable—but great.

When one contemplates all of these highly successful means of Soviet disruption throughout the world, the only reasonable conclusion to arrive at is that all of the missions of U.S. counterintelligence are of crucial importance. None whatsoever may be neglected, and all must be pursued with the utmost vigor and dedication.

The "Counter" in Counterintelligence

No analysis of the nature of counterintelligence would be complete without consideration of the way in which it differs from ordinary intelligence activities. Basically, it is intelligence of a special kind, plus something else. What is that something else?

The 1976 Executive Order No. 11905 (2/18/76) of President Gerald Ford, the first one to bind U.S. intelligence agencies and their operations, stated that counterintelligence is "*activities* conducted to *protect...from*" espionage, sabotage, subversion, assassination and terrorism. It directed the FBI, the nation's chief counterintelligence agency, to "detect and *prevent*" those dangers.[27]

Succeeding orders of Presidents Carter and Reagan defined counterintelligence as "*activities* conducted to *protect against*" basically the same dangers.[28] The resolutions of the House and Senate creating their respective intelligence committees used the words "*activities* taken to *counter*" certain threats from abroad.[29] The Church Committee said it was "*activity* dedicated to *undermining* the effectiveness of hostile intelligence services." [30]

A glossary of intelligence terms published by the House Intelligence Committee defined it as "*activity*...intended to detect, *counteract, and/or prevent*" espionage and other security threats. Four alternate definitions it quoted from earlier glossaries used the words "*protect against*", "*protection...from*", and (two of them) "*destroying* the effectiveness of" foreign intelligence activities and "*protection* of" their targets.[31]

There is unanimous agreement, in other words, that the distinctive characteristic of counterintelligence is that it does more than collect information. Intelligence merely collects, stores, analyzes and disseminates to policymakers security-related information about foreign countries; counterintelligence collects, stores, analyzes and disseminates (to a much more limited degree) information about certain foreign threats to U.S. security *and then ACTS to destroy or neutralize them.* Its end purpose is not the mere collection and analysis of information, but ACTION, and SUCCESSFUL ACTION, against those who threaten the security of the United States.

In the past, the U.S. has subscribed wholeheartedly to this fundamental truth about counterintelligence. The "Domestic Intelligence" section of the FBI's 1961 annual report,

for example, under the subtitle "*Protecting* Democracy," opened with these words:

> Keeping appropriate Government officials constantly informed regarding the activities and plans of the enemies of democracy within the United States so that *effective preventive measures and countermoves* can be devised is the *primary aim of the FBI* in the domestic intelligence field.
>
> *Precluding or circumventing* espionage, sabotage or other subversive activities provides far greater *protection* to the American people than the prosecution of individuals who attempt such assaults on American freedoms (author's emphasis in this and following quotations).[32]

The following year, the same section of the Bureau's report was entitled "Counterintelligence Activities" and had the same subtitle (the FBI, not unreasonably, then used "domestic intelligence" and "counterintelligence" interchangeably). Its second introductory paragraph read in part:

> The international communist conspiracy, an avowed enemy of the democratic system of government, is constantly assaulting this Nation with its spies, its propaganda and its domestic adherents. Identifying its operations and *penetrating and disrupting them* are the *main counterintelligence objectives* of the FBI.[33]

FBI testimony was equally straightforward on the issue. At one point in his appropriations testimony, on March 6, 1961, Director J. Edgar Hoover told the House subcommittee members, "I would like to review generally some of our *counterintelligence programs to curb the threat* of communism and subversion." [34]

Four paragraphs of general treatment of Communist front operations by Hoover were followed by this transcript notation: "(Discussion off the record)." Hoover next discussed "Espionage and Counterintelligence," "Soviet-Bloc Official Personnel in the United States," "Soviet-Bloc Espionage Targets" and "Collection of Unclassified Strategic Intelligence" (as the subcommittee titled various sections of his published testimony).

The same notation, "discussion off the record", appeared at the end of each of these sections after brief generalized commentaries by Hoover. It also appeared twice in the course of his preceding testimony on the U.S. Communist Party.[35]

The official transcript of his testimony before the subcommittee the following year read in part, "The FBI has met the ever-increasing threat of Communist-bloc espionage with *aggressive programs designed to disrupt and prevent their effectiveness* in our country." [36]

It is apparent that Hoover, in his off-the-record testimony, was informing the subcommittee members about certain FBI counterintelligence actions which, because of their very nature, could not be made public. It is also apparent from his public record testimony and the Bureau's annual reports (distributed by the thousands to the media, Congress, Executive branch personnel and interested citizens and organizations) that the FBI, with the general approval of the government and American people, was then operating on the "counter" principle of counterintelligence, that it was clearly an ACTION agency, aggressively seeking to *penetrate and disrupt Soviet assaults of all types* on the security of the United States—which is what a U.S. counterintelligence service is supposed to do.

It now also seems probable that Hoover's classified testimony, at least in part, concerned the seven COINTELPRO (COunterINTELligence PROgram) operations exposed in 1973 through a Freedom of Information Act lawsuit filed by Carl Stern, an NBC reporter. Five of these neutralization and disruption programs had domestic targets

(CPUSA, SWP, White Hate Groups, Black Extremists and New Left); the remaining two were directed against Communist bloc intelligence/espionage activities, such as those of the KGB. The first listed (targeting CPUSA) had been instituted in 1956, the last in 1968. *All were terminated in 1971*, the year before Hoover died.

CounterACTION authority is essential to all counterintelligence agencies. Their mission to frustrate, block, undermine and prevent the successful execution of espionage, assassination, terrorism and subversion plots and operations by foreign powers cannot be fulfilled without power to take positive action against those involved in such activities.

The Criminal Standard and Counterintelligence

There should be no need to consider the application of the criminal standard to counterintelligence, because law enforcement and intelligence are two entirely different matters. For more than a decade, however, some elements in this country have waged a vigorous campaign to have the criminal standard, which is appropriate to police work, applied to the domestic intelligence field (an essential element of counterintelligence) and even to some other aspects of foreign counterintelligence. Their primary goal is to have the criminal standard incorporated in a restricting charter for the FBI. They have been sufficiently successful to have such provisions written into proposed charter bills (fortunately not enacted) and to confuse many people on the issue. Hence, this analysis.

The duty of the police is to enforce the laws, which are the foundation of ordered society. They must try to apprehend the guilty after crimes are committed and, whenever possible, prevent crimes from being committed. To fulfill their mission they must develop evidence that is admissible in a court of law—that is, evidence which has been gathered without violation of laws or of the suspect's constitutional rights.

Beyond the enforcement of specific statutes and ordinances, police also have a general obligation to preserve the peace and order of their communities. For these reasons, the courts (including the Supreme Court) have consistently upheld their right to collect both crime and disorder-related intelligence, because without such information they can neither prevent many crimes nor preserve the peace—functions which the courts say are more important than punishing law breakers after the fact.

Under the Bill of Rights, law enforcement officers should *never* as a general rule be investigating or collecting information about any citizen unless they have reason to believe the citizen is involved in a crime or is somehow associated with activities that threaten community peace and order, whether or not those activities are technical crimes or misdemeanors. There is no other justification for police investigation. That, basically, is the criminal standard.

Additionally, the Fourth Amendment normally requires all law enforcement officers to obtain a warrant for any investigation or surveillance (search) of a suspect that would invade his right of privacy. They must present to an independent magistrate evidence

indicating the citizen has committed, or is about to commit, a crime. If the evidence convinces the magistrate that there is *probable cause* to believe the suspect guilty of an offense, he will issue an order or warrant approving use of the type of intrusive investigation requested (wiretap, bug, physical search, etc.). The warrant is the device through which the criminal standard and Fourth Amendment protect the rights of Americans from invasion by law enforcement officers.

Counterintelligence agencies, however, are not law enforcement agencies and principles governing law enforcement therefore do not apply to them. They do not try to convict people of offenses for which they can be imprisoned, fined, or both. The basic duty of all intelligence agencies is to collect security-related information for a nation's policy makers. They pursue knowledge, not criminals (against whom they are powerless to act, having no law enforcement authority). Their concern is not law-breakers, but threats and dangers to the security of the nation, whether or not they are violations of law. Their mission extends far beyond crime as defined in statutes.

The criminal standard and other rules and principles keyed to law enforcement, as distinguished from all other professions, are no more applicable to counterintelligence than the rules of the courts, which have one function in our scheme of government, are applicable to the proceedings of Congress, which has an entirely different function in the scheme.

The general principle that the rules governing any organization or agency must be determined by its function, duty or goal is supported by thousands of examples in everyday life. Lawyers could not efficiently carry out their role in society if the principles and code of ethics of the medical profession were applied to them—or vice versa. What doctor could cure a patient by studying Blackstone or applying the techniques and rules of courtroom argumentation? What kind of Supreme Court would the nation have if its proceedings were directed by the Actors Studio?

Beyond the practical rule that mission must determine methods, there is a far more compelling reason why the criminal standard should never apply to counterintelligence. It is this:

It would be contrary to the basic intent and purposes of the Constitution.

The fundamental purposes of the Constitution are clearly stated in the Preamble, "We, the people of the United States, in order to...do ordain and establish this Constitution for the United States of America." Two of the six specified purposes—"domestic tranquility" and "common defense"— clearly require intelligence collection and, in a broad sense, all of them do. They cannot be achieved or maintained without it.

Moreover, the intelligence required must encompass *all* threats to the Constitutionally proclaimed purposes of the U.S. government and to its security. Without such knowledge, the government cannot preserve itself to "insure domestic tranquility, provide for the common defense" and carry out its other missions as stated in the Preamble. It is for this reason that the Supreme Court, reiterating earlier decisions, ruled in *Agee*:

> "It is 'obvious and unarguable' that no governmental interest is more compelling than the security of the Nation." [37]

Were the criminal standard applied to counterintelligence (or intelligence), U.S. counterintelligence services would be strictly limited to collecting information about crimes already committed or those known to be imminent.

The key question, therefore, is this: Are all threats and dangers to the national security

crimes, i.e., would they be subject to intelligence surveillance under the highly restrictive criminal standard? By no means.

Examples to illustrate this abound:

—In 1953 the Senate Foreign Relations Committee published a report, "Adequacy Of United States Laws With Respect To Offenses Against National Security." Prepared by the American Law Division of the Library of Congress for the committee, the report dealt with such matters as treason, espionage, sabotage, sedition and electronic surveillance and found flaws and weaknesses in the laws relating to all of them. One of its conclusions was that, because of these gaps, when individuals enagaged in hostile actions against the U.S. "in many instances such conduct may escape punishment entirely." [38]

The committee chairman, Senator Alexander Wiley, noted in his introduction that the study revealed "some wide-open loopholes through which enemy agents can escape and have already effectively escaped punishment." [39]

Virtually all the loopholes mentioned in the 1953 report still exist today.

—The Supreme Court found in 1981 that the activities of Philip Agee (and his cronies who published *CounterSpy* and *Covert Action Information Bulletin*) in exposing the identities of CIA personnel in all parts of the world, presented "a serious danger to American officials abroad and serious danger to the national security."

Yet, in March, 1977, the Department of Justice had notified Agee that he could return to the United States without fear of prosecution for those activities (he was then in England, from which he was shortly expelled for consorting with KGB agents). He had committed no crime. But if the criminal standard had applied to counterintelligence at that time, U.S. agencies could not have even surveilled his activities abroad—as they did for obviously compelling national security reasons.

—A foreign-directed conspiracy to overthrow the U.S. government by force and violence is an obvious security threat that should be the target of counterintelligence surveillance. Yet the Smith Act (which criminalizes all such conspiracies, whether or not foreign-directed) was not enacted until 1940. Under the criminal standard, neither the FBI nor any other intelligence agency could have investigated the Communist Party (or any other such conspiracy) prior to that year. Moreover, if the Smith Act should be repealed—a goal some members of Congress are pursuing in current criminal code revision deliberations—it would become unlawful for the FBI to continue surveilling operations of the CPUSA or any similar conspiracy in this country if it was bound by the criminal standard.

—Communists working in defense plants are an obvious security threat, given their commitment to and record of sabotage in time of crisis. But as of now it is not a crime for them to work in such plants. Should the FBI be able to investigate to determine the extent of this threat so that, in the event of war, steps could be taken to prevent sabotage of essential defense production? It could not do so if the criminal standard controlled counterintelligence.

—Terrorism, as such, is not a crime in the United States. In addition, many terrorist-support and related activities, as such, are not crimes. Should counterintelligence agencies therefore be barred from gathering information about such activities of terrorist groups and their supporters? They would be barred if the criminal standard were incorporated in their agency charters, or otherwise imposed on them.

—Given the fact that there are gaps in U.S. espionage laws, in the Foreign Agents Registration Act and similar statutes, how could the U.S. government adequately protect

the national security if its counterintelligence agencies were forbidden to surveil certain of the activities of known espionage and other agents dispatched to these shores by hostile foreign powers simply because criminal laws did not cover every aspect of their undermining operations?

—Many elements of Soviet active measures or subversion are not criminal. The art of subversion, in fact, is to a large extent the art of using technically legal means to progressively undermine a government until it has become so weak that successful resort to clearly illegal violent overthrow is possible. Radical attorney William Kunstler expressed it well when he said, "I want to bring down the system through the system." [40]

To a great degree, Communist parties and their fronts operate on this same principle. History records their repeated successful use of this strategy. Yet for the most part, their activities in setting the stage for revolutions—organizing, agitation and propaganda—are not only not criminal, but in this country are protected by the First Amendment. Should a government be forced to blind itself to such danger because largely "legal" means are being used for its intended destruction?

There are many other practical examples that could be cited which make it evident that, because laws in themselves are not perfect, application of the criminal standard to counterintelligence would necessarily and inevitably ensure—indeed, guarantee beyond all doubt—that gravely inadequate security would be the inevitable result. The nation would be blinding itself to numerous threats to its very existence. The government would therefore be unable to protect what the Supreme Court holds to be its most compelling interest, "the security of the Nation," and would thus be incapable of fulfilling the purposes which the Constitution says are the very reason for its existence.

The Experts Look at U.S. Counterintelligence

Recent statements by a number of authorities on intelligence matters indicate that the overall condition of American counterintelligence today should not be a matter of comfort to the American people.

During the 1981 hearings of the Senate Intelligence Committee on the confirmation of William J. Casey as Director of Central Intelligence, a member noted that the committee was concerned about American counterintelligence and asked Casey if he had any thoughts on how to improve it.

Casey replied that he was "very concerned" about it, referred to the "enormous cost and enormous risk" involved in the possibility that our enemies might be deceiving and misleading us, and added:

> I have understood that it [counterintelligence] had been severely diminished; loss of experienced people and that sort of thing. And it is certainly, Senator, one of the first things we have to rebuild.[41]

The same issue was brought up the following month during the committee's hearing on the confirmation of Admiral Bobby Inman as Deputy Director of Central Intelligence.

Inman, former Director of Naval Intelligence and of NSA, who had also held other important intelligence positions in his 30-year naval career, replied:

> I have a perception that it is both undermanned and probably the one area that really may be handicapped by restrictions and procedures.[42]

During a later hearing on the confirmation of Inman's successor (upon the Admiral's retirement after a year's service), Senator Malcolm Wallop, who has served on the Intelligence Committee since its formation in 1977, declared, "We do not have a counterintelligence system, just a lot of disjointed activity in the field." [43]

In 1978, at the same time he had emphasized the great importance of counterintelligence, Richard Helms, the former Director of Central Intelligence whose operational experience in the field dates back to World War II, made the following comment about U.S. counterintelligence:

> And sad to say, the evidence of late suggests that both the CIA and the FBI are doing a lot less, just as the Russians are doing a lot more...." [44]

Such views are not rare. The House Intelligence Committee, in its first annual report (1978), expressed concern that this country's "defenses against penetration by foreign intelligence services may have been lowered well beyond an acceptable level."

The Senate Intelligence Committee found in its 1979 report that "an extraordinary counterintelligence effort" [45] was required to meet the threats and dangers posed by hostile intelligence services—an effort which, if the above authoritative statements are accurate, was impossible of achievement. Two years later, the Senate committee found a continuing need for improvement (including funding) and was concerned that the country might lack adequate technical counterintelligence as well as manpower.

Why is U.S. competence in counterintelligence not better than it is? What are the causes of the intelligence community's weaknesses and problems in this area? There are a number that can be documented.

Definitional Confusion

For many years American intelligence (and counterintelligence) has operated largely on the basis of a general understanding of intelligence terms, the "words of art" of the craft, rather than on official, legally binding definitions of what was or was not embraced by a particular word or term.

The matter of definition has not, until recently, been a significant or important problem. Intelligence is not law enforcement and cases are not made or broken, as in prosecutions, on the basis of a court's interpretation of the exact meaning of a given word in a criminal statute. General understanding of the intent of perhaps loosely defined, mission-describing terms has been adequate for effective operations. In fact, a certain imprecision has sometimes been more of a help than a hindrance, permitting the latitude necessary for the adequate protecion of U.S. interests.

Today the situation is changed. The activities of all intelligence agencies are now guided (and restricted) for the first time by Presidential Executive Orders and related guidelines and regulations brimming with intelligence terms and specifying what they can and cannot do, and when and how they can, or cannot, do it. Executive Orders have the force of law. They bind intelligence personnel as firmly as a statute enacted by Congress. Violation of any of their provisions, or of guidelines issued pursuant to their authority, can mean serious trouble—prosecution, prison or fines or both, dismissal or other damaging punishments. Only a rash person will not be very cautious to see that he abides by them to the letter, taking no chances of risking his future.

Additionally, U.S. counterintelligence particularly—because it must deal to a considerable extent with domestic groups and individuals—has become increasingly subject to challenge in the courts. This means that lack of precision in definitions, questions about their exact meaning, may be settled by the judiciary rather than by executive or intelligence officials, with serious, far-reaching results. An urgently necessary or highly desirable action could be ruled unauthorized and thus banned until corrective action could be taken; another, undertaken with higher intelligence and executive approval, might eventually be ruled unlawful and its participants subject to punishment. Not only effectiveness, but morale, can be adversely affected by the possible results of this development.

Concern over definition is not fanciful quibbling, as was demonstrated in the Aldo Moro case. Moro, leader of Italy's Christian Democratic Party, was one of the drafters of the 1948 constitution that established the Italian Republic. He had served as Italy's minister of education, of justice and foreign affairs—and five times as prime minister. It was expected that he would be chosen president in the upcoming elections, when he was kidnapped in Rome on March 16, 1978, by twelve men who killed his five police bodyguards.

The Red Brigades, Italy's largest, most notorious and feared terrorist group (it has killed and crippled scores) announced the day of the kidnapping that it was holding Moro prisoner and that he would be tried by a "people's court" based on "proletarian justice." It later revealed that he had been tried, convicted and sentenced to death, but might be released if all Communist prisoners in Italy (including over 150 Red Brigades terrorists) were released. All political parties in the Italian government agreed with its decision not to capitulate to this demand.

The most massive manhunt in modern day Italy was undertaken in an effort to save Moro. CESIS, the Italian intelligence unit comparable to a high-level NSC committee in this country, asked the CIA for help.

The CIA turned down its request—because of the definition of the term "international terrorist activities" in the Executive Order governing U.S. intelligence agency activities issued by President Carter. Moro's body, riddled with eleven bullets, was found in the trunk of a car left on a Rome street on May 9.

Perhaps CIA help would not have changed the outcome of the Moro case. But its refusal to respond to the Italian appeal did not help U.S. prestige (or the CIA's) in Europe—inasmuch as other nations did give intelligence assistance.

Obviously, a mere definition can have far-ranging impact.

The scope of the problem is considerable. Testimony of intelligence officials in the 1975-76 hearings of the Church, Pike and other congressional committees included many intelligence terms not understood by members of Congress. As a result, the resolutions creating their respective House and Senate intelligence committees directed each to develop

a uniform set of definitions of intelligence terms for governmental use. Given the lack of experience and knowledge that characterized the staffs of both new committees, this was a mission beyond their capability. In September 1977, the National Foreign Intelligence Board, established by the Carter order and composed of senior intelligence officials, formed a working group of representatives of all agencies in the Intelligence Community to produce a glossary of terms commonly used in the Community.[46] The working group spent nine months on the task. Its glossary was published in the 1978 annual report of the House Intelligence Committee.[47]

The glossary contained more than 300 terms, some of them highly technical. An appendix contained *different definitions* that could be found in previously published glossaries and government documents for over 75 of the terms defined in the new glossary (another appendix listed about 90 previously published glossaries).

The new glossary, of course, contained a definition of counterintelligence. But it was different from the one then binding on the Community by the Executive Order of President Carter. His EO definition was *one of four other definitions* of counterintelligence included in the appendix which *differed from the glossary definition and from one another.*

Today, the Community is bound by a definition in the Reagan Executive Order which differs somewhat from all preceding definitions—those in the Ford and Carter orders, the "official" glossary definition, and the four in the glossary appendix (one of which was Carter's).

There are further complications.

President Ford's Intelligence Community Executive Order (No. 11905, 2/18/76) dictated that the FBI, the nation's chief counterintelligence agency, would carry out its foreign counterintelligence functions pursuant to guidelines issued by the Attorney General. Per the President's order, Attorney General Edward Levi promulgated guidelines three months later. When these were declassified in part two years later, it was revealed that their definition of counterintelligence differed materially from that in the Ford order (which they were meant to support).

The Levi foreign counterintelligence guidelines remained in effect (with some alterations) during most of the Carter administration, even though the Carter order contained a different definition of counterintelligence.

New foreign counterintelligence guidelines promulgated by Attorney General Benjamin R. Civiletti became effective May 1, 1980. Their definition of counterintelligence differed from those in the Ford order, the Carter order and the Levi guidelines. Moreover, when the Reagan Executive Order was issued 19 months later, its definition differed from those in the Civiletti guidelines and in all the others, even though the Civiletti guidelines were—and are—still in effect.

During the past eight years the FBI and other agencies with counterintelligence functions have been confronted with a sequence of simultaneously differing, yet official and binding, definitions of counterintelligence and have thus been confounded in terms of the exact scope of their duties and authority.

It is possible to define counterintelligence in different ways but in such manner in each case that its meaning and scope are the same. On the other hand, different words or virtually the same words differently arranged, can clearly alter meaning and scope to a large or small degree, or raise doubt, questions and debate about the exact compass of any definition. The latter presents the greatest problem. Administration officials can resolve questions or debate about a definition's scope by fiat, interpreting specific words narrowly

or loosely, as they choose. If a debatable definition becomes an issue in a court case involving explicit authorization for a particular action, however, there is no telling how a judge will rule on the matter—with potentially serious consequences.

The varying definitions of counterintelligence that have been in effect during the past eight years have been both clearly different in the authority they conferred and also confusing and debatable on the issue.

The Ford order had the virtues of clear, simple, direct and generally broad language. It defined foreign counterintelligence as

> activities conducted to protect the United States and United States citizens from foreign espionage, sabotage, subversion, assassination or terrorism.[48]

For years before the order was issued the FBI had been surveilling and reporting on Soviet open collection of intelligence in the U.S., observing not only KGB but other Soviet personnel picking up useful, highly technical literature at industrial exhibitions, conferences and similar affairs. Technically, such collection is not espionage and surveillance of it was therefore no longer authorized by the Ford order. Yet such observation is important to a counterintelligence agency because, among other things, coverage of the extent of the effort to obtain certain types of open, unclassified information provides clues to likely targets of clandestine collection.

The Carter Executive Order (No. 12036, 1/24/78) contained the following definition of counterintelligence:

> information gathered and activities conducted to protect against espionage and other clandestine intelligence activities, sabotage, international terrorist activities or assassinations conducted for or on behalf of foreign powers, organizations or persons....[49]

By limiting agencies to espionage and other "clandestine" intelligence activities, the Carter order technically continued to bar surveillance of open hostile intelligence collection. This was an obvious flaw, similar to that in the Ford order.

It was further defective because, by eliminating Ford's "subversion" and restricting authority to surveillance of other "clandestine intelligence" operations, it technically barred coverage of various forms of Soviet active measures.

Control of non-ruling Communist parties and their fronts as well as of international communist fronts, continue to be highly important Soviet active measures, according to the FBI and the CIA. Yet as already observed, this control is not effected through the KGB or any other Soviet intelligence agency, but by the International Department of the Politburo. Both the CIA and the FBI, in testimony and studies submitted to Congress, have emphasized this point. A CIA expert on Soviet active measures made the following statement before the House Intelligence Committee:

> The KGB is not supposed to use a Communist Party mechanism [for active measures] without approval.... [A] residency cannot go out and recruit a local communist or someone involved...[in a front] without high level Moscow approval,... [T]hey cannot use party as such.[50]

The International Department is so powerful in the active measures field, according to the CIA, that it reviews and coordinates foreign policy suggestions by the Ministry of Foreign Affairs, the KGB and other high level Soviet agencies and even uses the KGB as an errand boy when its active measures, or an element of them, requires secrecy (i.e., delivering cash sums to the CPUSA, which is financed by the International Department).

Soviet control of the CPUSA is hardly clandestine. It has been a matter of Congressional, court and executive findings for at least 35 years. In much earlier years, it was proclaimed by American Communists themselves. CP leaders now travel openly, not secretly, to Moscow and to major international conferences of the world's pro-Soviet Communist parties, and Soviet officials openly meet with CPUSA leaders in this country. Soviet control is also exercised in part through internationally circulated magazines such as the *World Marxist Review* and *International Affairs.*

For all these reasons, it is ridiculous on its face to assert that Soviet control of the CPUSA, its fronts and American branches of international Soviet fronts is a "clandestine intelligence" activity. The Carter order, therefore, technically did not authorize counter-intelligence surveillance of these most important Soviet active measures—though, oddly enough, it did authorize FBI surveillance of the KGB's secret transmission of money to the CPUSA on behalf of the International Department. (In this an *intelligence* agency was indeed operating *clandestinely.*)

The Ford order, it should be noted, shot itself in the foot on this issue. Its definitional word "subversion" was probably broad enough to cover *any active Soviet measure.* But the section of the order specifying the FBI's counterintelligence duties gave authorization to "detect and prevent espionage, sabotage, subversion, *and other unlawful* activities by or on behalf of foreign powers...." (Emphasis added.)

The clear implication of the words "and other unlawful" was that all subversion is criminal—which is far from the truth. The order thus clearly authorized counterintelligence surveillance only of such foreign-instigated subversion as was in violation of federal statutes—*i.e.*, very little. In doing so, it nullified most of the value of the broad term "subversion" in its definition and specifically barred FBI surveillance of open Soviet intelligence collection.

The current Reagan Intelligence Community Executive Order (No. 12333, 12/4/81) changed the definition of counterintelligence in the Carter Executive order only slightly, describing the term as

> information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities....[51]

By dropping the word "clandestine" which appeared in the Carter order between the terms "other" and "intelligence activities," the Reagan document for the first time explicitly authorized the collection of intelligence about Soviet and other open (lawful) collection of intelligence here or anywhere in the world.

For the same reason it also authorized collection of information about active measures carried out by all foreign intelligence services and action to counter them, it being generally accepted today that intelligence services routinely undertake such operations in addition to collection activities.

The Reagan definition is still defective, however, because like the Ford and Carter orders, it technically does not authorize coverage of active measures carried out by the Soviet International Department or any other non-intelligence agency of any nation in the world. International Department operations, among the most dangerous of Soviet active measures, simply cannot be accurately classified as "intelligence activities." Per the Reagan order, the FBI should not today be surveilling the Communist Party, its fronts, the U.S. Peace Council (an open affiliate of Moscow's World Peace Council), the U.S. affiliates of any other international fronts, or any other operations of the Politburo's

International Department in this country. The same restriction is true, it should be noted, of U.S. counterintelligence services operating abroad.

There is, however, an ironic aspect involved in the fact that Executive Orders have the force of law and that, throughout the past eight years, the House and Senate Intelligence Committees, the Intelligence Oversight Board, the Office of Intelligence Policy and Review in the Department of Justice and other watchdog agencies have supposedly been breathing down the necks of the FBI and all other intelligence community agencies to see that they adhere strictly to the rules in all their operations.

It is that the FBI has been conducting basically the same types of counterintelligence activities during these eight years, despite the gaps and real differences in the authority conferred on it by the varying definitions of counterintelligence in the executive orders of the last three presidents. It has for example, been surveilling the CPUSA, its various fronts, and such groups as the U.S. Peace Council in this country. The Interagency Intelligence Study of Soviet Active Measures, which dealt only with such activities abroad, reveals that agencies with overseas counterintelligence authority have been doing the same thing.

One is forced to conclude that, since intelligence community executive orders became "the law," every administration has been interpreting some of the intelligence terms in these orders pretty much as they please, with no apparent concern for the real world or for the plain meaning of words.

This does not mean that the *extent* of collection has been the same in each administration, or that in the same or similar circumstances, the same techniques have been as freely or widely used in one administration as in another. Beyond the technical meanings of the varying definitions of counterintelligence in the Executive Orders, the extent of collection, the techniques used in varying circumstances, etc., have also been determined in part by other factors— changes in guidelines, new interpretations of the meaning of laws perceived as affecting information collection (e.g., the Privacy Act) and, perhaps most importantly, the differing *attitudes* of successsive administrations toward intelligence, security and related matters.

What is meant is that, in a broad sense, the general areas of FBI coverage have been the same, though they should not have been because of the technical differences in the binding definitions of "counterintelligence" in the three Executive Orders. During the Ford and Carter administrations, for example, the FBI surveilled Soviet open collection of intelligence in the U.S. although the Presidential definitions of counterintelligence then in effect technically authorized surveillance only of espionage and other clandestine intelligence activities.

These administrations have gotten away with it, apparently because of careless or deliberately loose oversight. But everyone involved has taken risks. Court tests of some counterintelligence agency activities, based on perceptive critical challenges to their executive order authority, could well have resulted in decisions finding certain actions critical to national security to be unauthorized and could have directed their cessation. The fact, of course, that executive orders can be changed overnight could preclude lasting damage in this area. A current order could be amended quickly to close any loopholes found by a court.

But there might well be other, more lasting damage. The reputation of the FBI or other counterintelligence agencies involved in court challenges would no doubt be further sullied and their "lawlessness" decried by elements in the media, Congress, or in the "constitutional rights" field (where active measures and agents of influence would prob-

ably be involved). Indeed, such an effect would rub off on all intelligence agencies.

Counterintelligence morale—and thus efficiency—would obviously suffer. Personnel in the intelligence community still recall vividly that over 120 FBI agents were hauled before grand juries in the Carter administration and several top officials prosecuted. They are aware that others have had large money judgments assessed against them in civil suits for alleged constitutional rights violations. This in itself has already adversely affected morale.

Additionally, the gaps and contradictions in recent executive order and guideline definitions outlined here have been only too apparent to officials and personnel who have analyzed them. Some personnel are also aware that there have been disputes within and between agencies, the Justice Department and Congressional intelligence committees about the precise scope of the definitions. Add a few adverse court decisions to these factors which have already hampered vigorous execution of duty, and the potential for national security damage is great.

At the very least the U.S. owes its counterintelligence personnel a clear, precise definition of the scope of their authority—a definition that encompasses everything their experience tells them should be included and which frees them of doubt and fear of any criminal or civil liability.

Criminal Standard Imposed on Counterintelligence

The FBI, as the nation's principal counterintelligence agency, had been operating on a national security or intelligence standard, rather than a criminal standard, for 40 years when the Levi domestic security investigations guidelines were promulgated in 1976. To understand the impact these guidelines had on Bureau counterintelligence capabilities, some background facts are essential.

The FBI was created as the Bureau of Investigation in 1908 to serve as the investigative arm of the Department of Justice. At that time, it had no intelligence, counterintelligence or national security functions. It was a law enforcement agency charged with investigating violations of federal statutes not specifically assigned to other agencies. In time it became politicized and corrupt, exceeding and abusing its authority in a variety of ways. In 1924, President Calvin Coolidge gave his Attorney General, Harlan F. Stone, the job of reforming the Bureau. Stone selected J. Edgar Hoover, a young career official in the Bureau recognized as competent and honest, as the new Bureau director and instructed him that "the activities of the Bureau are to be limited strictly to investigations of violations of law...."

The Bureau, renamed the Federal Bureau of Investigation in 1935, was placed on a strict criminal standard. Hoover rebuilt and reformed the Bureau from top to bottom. Eventually, it became internationally famous, recognized as the finest *investigative* agency in the world.

In 1936 President Franklin D. Roosevelt made a basic change in the nature of the FBI.

He was concerned about the growth in this country of totalitarian movements which had ties with aggressive foreign dictatorships. He instructed Hoover that the FBI was to collect intelligence systematically about "subversive activities in the United States, particularly Fascism and Communism." FDR wanted "a broad picture of the general movement and its activities as [they] may affect the economic and political life of the country as a whole." He directed Hoover to keep the assignment secret.

By presidential directive, the FBI was then off the criminal standard. It was still a law enforcement agency with that standard applying to its strictly criminal investigations, but it had a new intelligence (really counterintelligence) duty keyed to the country's security needs. They, rather than any criminal laws, would dictate the FBI's activities in this area.

In 1939, when war broke out in Europe, FDR made the FBI's counterintelligence assignment public. He called on all law enforcement agencies in the country to assist the FBI by turning over to it all information they obtained "relating to espionage, counter-espionage, sabotage, subversive activities and violations of the neutrality laws."

FDR's 1939 public directive was reaffirmed in a 1943 wartime directive and in subsequent directives by Presidents Truman (1950), Eisenhower (1953) and Kennedy (1962). The Kennedy directive was still operative in 1976 when the Levi guidelines became effective.

Additionally, the constitutionality, propriety—and even the necessity—of the FBI's functioning on a national security or intelligence standard had been repeatedly affirmed by Congress and the courts on all levels. In a 1972 decision, for example, the Supreme Court had stated:

> One of the functions of...the Federal Bureau of Investigation, is to compile information [*i.e.*, gather intelligence] on law violators, agitators of violence, and possible subversives.[52]

The Levi guidelines dictated, however, that all future FBI "domestic security" investigations—which were pivotal in terms of the Bureau's counterintelligence capabilities—would be limited strictly to the activities of groups or individuals "which involve or will involve the use of force or violence and which involve or will involve the violation of federal law...." [53]

The new guidelines thus completely reversed the domestic security (counterintelligence) directives of every President since FDR. They returned the FBI to the narrow criminal standard, stripping it of all intelligence authority in the internal security field.

The Levi document went even further, denying the FBI the right to gather information about violations of all federal laws relating to domestic security. As the above quotation indicates, the guidelines protected from FBI investigation any violence that did not actually break *federal* laws (legal experts point out that many acts of violence do not, being "criminalized" only by state laws); and even where federal laws were violated, investigations were allowed only when force and violence were involved.

That was not all. The Levi provisions emphasized that the FBI could not even investigate every form of violence which was an infraction of federal laws. Violent breaches of federal law were actually protected from Bureau investigation unless they had one or more of the following intentions or purposes: overthrow of the U.S. or a state government; substantially interfering in the activities of foreign governments or their representatives in the the U.S.; influencing U.S. policy or decisions by "substantially"

impairing federal or State government functioning, or interstate commerce; or depriving persons of their civil rights.[54]

All other offenses were immune to FBI investigation as domestic security matters. Just why the Levi rules were ever labeled "domestic security" guidelines is not clear. They were simply a set of rules under which the Bureau would be allowed to collect criminal evidence about certain types of violations of a limited number of federal statutes.

The Levi guidelines finished the FBI as a domestic intelligence agency, depriving it of the right to collect the kind of information that would permit it to execute effectively any of its counterintelligence functions.

The superseding "domestic security/terrorism" investigations guidelines promulgated by Attorney General William French Smith, which became effective in March, 1983, retain the crippling criminal standard. As both Smith and FBI Director Webster stated when they were made public, they have "a criminal nexus." They authorize FBI investigation only of "enterprises" to further political or social goals "wholly or in part through activities that involve force or violence and a violation of the criminal laws of the United States." [55]

The Smith guidelines are keyed to the RICO (Racketeer Influenced and Corrupt Organizations) section of the Organized Crime Control Act of 1970. The purpose of Bureau investigations under their provisions is to obtain certain information about *criminal* enterprises (as defined in that law), "with a view to the longer range objectives of...prosecution of the criminal activities of the enterprise." [56]

In 1978, when the Levi guidelines were operative, FBI Director Webster told the House Assassinations Committee that "every agent who is involved in any work is conducting a criminal investigation. That is, he is looking for evidence of a crime believed to have taken place or in the process of taking place." [57]

Per the Smith guidelines, that statement is still true today. Compare that statement with testimony Webster gave the House Intelligence Committee in 1980:

> [T]he threshold of counterintelligence inquiry has traditionally, and I think properly, started at a much lower level [than the criminal standard]. We are trying to gather information which might be useful and not because someone has violated the law but because we believe that he is in possession of information that we need to know—and legitimately need to know....
>
> In counterintelligence we do not have evidence before us of a specific crime. We want to be able, just as in counterterrorism, to identify at the earliest stages an incipient problem. No crime may yet have occurred.... I don't believe it [the criminal standard] has application here in terms of the function of counterintelligence.[58]

The Smith guidelines are somewhat better than the Levi guidelines because they relax slightly the tightness of the criminal nexus. However, they are still dangerous and objectionable because they continue to deny the FBI the domestic intelligence authority it must have to perform its important counterintelligence functions effectively. Numerous undermining or subversive activities undertaken in this country as elements of Soviet active measures are not embraced by the RICO statute and are thus immune to Bureau investigation or intelligence collection.

No other nation on earth thus limits the authority of its key counterintelligence agency in the protection of its national security.

The Need for Analysis

The 1978 Intelligence Glossary defines *analysis* as

> A process in the production step of the intelligence cycle in which intelligence information is subjected to systematic examination in order to identify significant facts and derive conclusions therefrom.[59]

U.S. counterintelligence agencies can amass tremendous amounts of counterintelligence information, but will be ineffective unless that information is regularly reviewed, studied and analyzed to discover its implications concerning hostile intentions, efforts, concentration points and strengths, and U.S. capabilities in relation to them.

Just what do those who are hostile to the U.S. want to get? What is the range of their priorities? What variety of methods are they using to obtain what they want? What do they perceive to be our most valuable secrets? Considering hostile strengths, how vulnerable are our classified projects and how can we provide better security for them? etc., etc.

What are our greatest weaknesses in combatting Soviet active measures? How and in what areas have the Soviets been most effective in the past? What was wrong with U.S. counterefforts? How can they be improved? What can be done now—and later—to prevent their being effective? These are some of the questions which must be answered in developing effective counterintelligence. Establishment of priorities in these matters is obviously a basic need which analysis alone can provide.

Top performance can never be expected in any field, no matter what it is, without continuing analysis. Intelligent, effective effort is completely dependent on it. Without skilled scrutiny of compiled information, there is nothing but disjointed activity which cannot produce desired results. A football coach, for example, amateur or professional, who failed to review films of games his team had played and of games his upcoming opponents had played, in order to analyze his and his opponents' relative strengths and weaknesses, would obviously be a consistent loser—and soon out of work.

The need for intelligence/counterintelligence analysis has long been recognized, yet the U.S., amazingly, has only very recently made provision for anything resembling a comprehensive, overall analysis of its counterintelligence requirements.

On October 22, 1945, at the end of World War II, J. Edgar Hoover submitted to President Truman "A Plan for U.S. Secret Worldwide Intelligence Coverage" to carry on the vast intelligence effort undertaken during the war. (The FBI had been given wartime *foreign* intelligence collection duties and covered the Western hemisphere). Hoover's plan read in part:

> A unit for evaluation and analysis would be established...to which the three operating agencies would furnish intelligence data and appropriate review, analysis, and utilization in international matters.[60]

Yet the FBI, which he directed for 42 years and which has been our principal counterintelligence agency for almost 40 years, *has never had authorization to analyze its information.* It is empowered only to collect and to disseminate counterintelligence information to certain restricted recipients.

The problem this creates was driven home to both the Johnson and Nixon administrations in the Sixties when racial riots were endemic and violent anti-Vietnam War demonstrations a regular occurence. Both administrations received extensive information on this violence from the FBI, but it was mere data. There was no analysis. Additionally, although

both administrations were concerned about the question of foreign involvement in the violence, the FBI lacked the authority to collect abroad the information that would make such a determination possible.

Attorney General Ramsey Clark set up a group in the Department of Justice—the Interdivision Information Unit (IDIU)—to computerize all the information related to the disturbances received from the FBI and a number of other domestic agencies. Another group, the Intelligence Evaluation Committee (IEC), was supposed to evaluate this information. The CIA was requested, and agreed, to supply information on the foreign travel of the organizers of violent activities and on related matters.

Justice Department lawyers on the IEC, however, lacked training and competence in analysis. They turned to the CIA for help. Richard Helms, DCI, very wisely, as later developments proved, refused to let the CIA liaison officer sit as a member of the IEC. In view of the Agency's lack of internal security jurisdiction, he did not want it "too deeply involved in domestic matters." The result was that, with no help received from trained professional CIA analysts, there was never any useful analysis of all the data collected. The Department and its investigative arm, the FBI, were incapable of the final, most important step in the intelligence/counterintelligence process, analysis—the key to the utility of intelligence information.

After reviewing this unsuccessful effort at analysis, the Rockefeller Commission recommended in its 1975 report as follows:

> A capability should be developed within the FBI, or elsewhere in the Department of Justice, to evaluate, analyze, and coordinate intelligence and counterintelligence collected by the FBI concerning espionage, terrorism, and other related matters of internal security.[61]

The Ford Executive Order issued about eight months later, however, conferred no analytical authority on the FBI. The same was true of the 1978 Carter Order which, in another direction, attempted to establish an overall analytic unit. It created a Special Coordinating Committee (SCC) in the National Security Council, one of whose duties was to "develop policy with respect to the conduct of counterintelligence activities" and provide the President with "an overall annual assessment of the relative threat" to U.S. interests from foreign intelligence and security services along with "an assessment of the effectiveness of" U.S. counterintelligence.[62]

The plan did not work—perhaps because the designated members of the SCC were of such high rank and were given a considerable number of other important duties.

Action in this matter has finally been taken under President Reagan. His order authorizes the NSC to establish "such committees as may be necessary" to carry out its functions and responsibilities. In 1982, a "Senior Interagency Group—Intelligence" was established to replace the SCC along with two working groups; one for counterintelligence and the other for countermeasures. Director Webster heads the counterintelligence group and Secretary of Defense Caspar Weinberger the one for countermeasures.

In regard to this project, John McMahon, Deputy Director of the CIA, testified during his 1982 confirmation hearing that

> the National Security Council has directed us to review the counterintelligence programs of the Untied States, to look at the threat that exists here, to try and assess what ought to be done in the sense of goals to address that threat, what capabilities we have to bring to bear on the threat, and the difference will be the gaps where we need resources and adjustments.... [R]ight now we are just doing a plan study, trying to account, get the facts.[63]

Asked about when the review would be completed, McMahon testified that the first phase of it, "which will give us a feel for the threat and the capabilities," would be completed in July 1982.

Clearly, the FBI and all other agencies with counterintelligence responsibilities should be given analytic authority. On-going, virtual day-to-day-review of problems and response is crucial to each one's best performance. At the same time, national security interests urgently demand that permanent responsibility for at least an annual overall analysis should be imposed on some competent body which has broad Intelligence Community authority.

It is not known publicly whether the first comprehensive analysis of U.S. counterintelligence has finally been completed. If it has and an adequate review has been made it should hopefully lead to the elimination of some of the obstacles to effective counterintelligence noted above (and in other studies) and, independently of that result, provide for a much improved U.S. product. For the first time, U.S. counterintelligence will be centrally and intelligently directed.

What is known is that this kind of comprehensive analysis has been much too long in coming and that, having lacked it for so many years, this country's counterintelligence operations cannot have been up to the standard its citizens have a right to expect.

Control By Amateurs

The three presidential executive orders which have governed U.S. intelligence since 1976 have given attorneys general unprecedented power over all aspects of intelligence, and more over counterintelligence than any other element. No attorney general ever wielded such power over intelligence in this country prior to 1976.

The U.S. attorney general, the nation's chief law enforcement officer, is typically a lawyer of some prominence who happens to be a strong friend and/or political supporter of the president or the party in power. As a general rule, he knows little or nothing about intelligence or counterintelligence. Given responsibilities in the field, he turns to Justice Department lawyers for help. If he relied on career professionals who might have prosecuted a number of espionage or related cases, there would be at least a chance that he would get *some* good advice. The tendency, however, is to turn to "his" people, the new political appointees occupying fairly important positions in the Department.

Attorney General Edward Levi was directed by President Ford's Executive Order to promulgate guidelines governing FBI domestic security (largely Soviet active measures) investigations, as well as a number of others. A legal academic most of his life with no intelligence background, Levi appointed a six-man departmental committee to prepare the guidelines, comprised as follows:

Chairman: The Deputy Assistant Attorney General in charge of the Justice Department's Office of Legal Counsel.

Members: A Special Assistant to the Attorney General;
a lawyer in the Criminal Division;
a lawyer from the Civil Division;

a lawyer from the Office of Policy and Planning; and
a lawyer-inspector in the FBI Counsel's Office.

What was their intelligence experience? They had none. Even the FBI inspector had never worked in the security, intelligence or counterintelligence fields. As he testified in 1977, "Not having worked in this area, I don't know to what extent being Marxist suggests a necessary inclination toward violence." [64]

Levi's own basic approach to counterintelligence was revealed in his December 1975 testimony before the Church Committee. Noting that it had been suggested that U.S. foreign counterintelligence responsibilities might be assigned to a separate intelligence agency, he commented,

> My hope is that the fact that the FBI has criminal investigative responsibilities, which must be conducted within the confines of constitutional protections strictly enforced by the courts, gives the organization an awareness of the interests of individual liberties that might be missing in an agency solely devoted to intelligence work.[65]

He was law-enforcement, not intelligence, oriented.

Levi's six-man committee, lacking in experience and knowledge, labored for eight months and through 25 drafts before producing FBI domestic security investigations guidelines satisfactory to him. Their product, the so-called "Levi guidelines," as they soon became known, proved to be a disaster for Bureau domestic intelligence collection and thus for U.S. counterintelligence. Levi's testimony revealed that the same committee was working on FBI guidelines for handling White House inquiries, unsolicited mail, judicial and congressional staff appointment investigations, informants, counterespionage, the federal employee loyalty-security program, and criminal and criminal intelligence investigations, among others.

Two of the areas listed were obviously of great importance to counterintelligence and the national security—those concerning informants and "counterespionage."

The committee's foreign counterintelligence guidelines were so faulty they had to be revised even during the Ford administration because of the manner in which they were hindering Bureau investigation of Soviet espionage.

When the informant guidelines were released in January 1977, this writer stated they would result in "the virtual destruction of the FBI informant system." That is just what happened. While the Freedom of Information Act and other factors also influenced this outcome, the fact of the matter is that the Levi guideline provisions alone would eventually have brought about the same result.

W. Mark Felt, former Associate Director of the FBI, testified in 1982 that he and other top Bureau officials had supported the concept of guidelines for FBI domestic security operations as early as 1972, but that the 1976 Levi guidelines had little resemblance to their proposals and "were drawn up by persons who obviously had no knowledge of the problems involved." [67]

In the Carter administration, Griffin Bell succeeded Levi as, in effect, the "czar" of U.S. counterintelligence (the Carter Executive Order gave him even greater power over all intelligence operations). In a March 1977 press conference, he told reporters,

> Some of the most important work I do is in the field of intelligence. It takes an inordinate amount of my time. I really didn't know it was part of the duties of the Attorney General when I came up here.[68]

What was Bell's intelligence/counterintelligence background? None.

Flatly contradicting a series of Court rulings and well known facts, he stated in a 1978 speech devoted to intelligence,

> The words 'national security' should no longer be used, as they were for so long, to apply to domestic terrorism investigations.... The myth of 'national security' should not be permitted to blur the distinction between foreign intelligence and counterintelligence on the one hand and... domestic security investigations on the other hand.[69]

But years earlier the Supreme Court had held that a statutory definition of "national security" embraced "those activities of the government that are directly concerned with the protection of the nation from internal subversion or foreign aggression." [70]

The Helms-Hoover letter, previously quoted, and the federal court exhibit concerning the Venceremos Brigade are only two of literally thousands of documents Bell could have studied which demonstrate that domestic security investigations are indeed an element of national security and that, because of their extensive foreign ties, U.S. terrorist groups such as the Weather Underground are unquestionably serious "national security" concerns.

Counterintelligence and intelligence became so deeply (and inappropriately) involved in legal issues in the Carter administration that Bell created an Office of Intelligence Policy and Review in the Department of Justice. Whom did he pick to head what the media termed this "supersensitive" office as Counsel for Intelligence Policy? A young lawyer, Kenneth C. Bass III. What were his qualifications to formulate U.S. intelligence (and counterintelligence) policy? He had graduated from Duke, studied law at Yale, clerked for Justice Hugo Black and worked on Capitol Hill for a time before joining the Department of Justice in 1977, where he worked in the Office of Legal Counsel.* Another amateur occupied a key post in the management of U.S. counterintelligence!

As director of U.S. intelligence/counterintelligence policy, Bass was capable of asserting publicy in 1980 that the intelligence community had not been "the only rogue elephant running around," but that the Department of Justice and the Internal Revenue Service had been doing "exactly the same thing." He further remarked,

> The intelligence process is not a process of spying on Americans, finding out what Americans are doing or maintaining an internal security program.[71]

He continued in his public statement that the unresolved intelligence question was

> whether and under what circumstances the need to get information about foreign threats will be seen to override the rights of Americans to be let alone and not to be intruded upon.[72]

His view was that it was only on "rare occasions" that national intelligence needs overrode such individual rights.

Understandable, coming from a former law clerk for Justice Black, but hardly believable as a pronouncement of the U.S. Counsel for Intelligence Policy.

There has been some, but not enough, improvement in this area during the Reagan administration. Executive Order 12333 reduced the power of the attorney general, giving top intelligence officials the final say in a number of important areas by completely elimi-

* An analysis prepared for the Senate Internal Security Subcommittee inthe early 1970's reviewed 107 Supreme Court decisions relating to subversion (including espionage and violent overthrow) handed down during the years 1943-1961. It revealed that Justice Black had participated in 102 of them, had written five, and *had voted against the U.S. government position in all the 102 rulings, always siding with the opposition.* The analysis is unpublished. A copy is in the author's files.

nating the attorney general's role, or reducing it to an advisory or consultative status.

Attorney General William French Smith, however, like his predecessors, had no background in intelligence matters. For this reason, the authority remaining in the office per the Reagan order was still excessive, inevitably introducing elements of amateurism into those areas in which he retained authority. Because the odds are great that all future attorneys general will be similarly unqualified, they should never be given more than a consultative role in a limited number of matters.

Who was given the sensitive position of Counsel for Intelligence Policy in the Reagan administration?

Another capable, bright young lawyer, Richard K. Willard. After graduating from Emory University, Willard served as an intelligence officer in Vietnam with the Army Security Agency. He then attended the Harvard Law School and clerked for a U.S. appeals court judge and for Justice Harry A. Blackman before entering private practice.

Willard's intelligence experience in Vietnam was a plus. But it can hardly be argued that brief experience in a limited intelligence area qualifies a person to serve in a top intelligence policy post for a major world power. If genuinely professional results are desired—and they are essential to this country—much more knowledge and experience is required.

Willard headed the Office of Intelligence Policy and Review for only about a year before being promoted to Deputy Assistant Attorney General. A successor had to be found. Perhaps someone really knowledgeable and experienced would be selected. Whom did the administration pick?

The same former Justice Department lawyer who had chaired the disastrous Levi guidelines committee, Mary C. Lawton. A graduate of the Georgetown University Law Center, Ms. Lawton had joined the Department of Justice in 1960 and headed its Office of Legal Counsel in 1975, when she was chosen for the Levi committee post. She left the Department during the Carter administration to become general counsel of the Corporation for Public Broadcasting, a job far removed from intelligence. With the advent of the Reagan administration, she became White House Administrative Law Officer, another position that had no relation to intelligence.

Once more a person who, despite her guidelines committee experience, must be considered an intelligence amateur, held a key intelligence policy position in the U.S. government.

Amateurs obviously cannot compete on an equal footing with professionals in any field. Most of the world's intellignce services are headed by seasoned, shrewd professionals, and their policy and practices are guided by them—not by lawyers, old or young, whose major interest in life is U.S. civil and criminal law and justice for those accused or aggrieved under those laws. For close to a decade now the U.S. has turned much of the crucial governance of its counterintelligence and intelligence—both so vital to its security—over to amateurs who have been trying to compete with the most experienced and ruthless professionals in the world. On its face, the practice is ridiculous.

It is unreasonable to expect that, under these circumstances, the U.S. could have adequate counterintelligence capabilities. *It is* reasonable, on the other hand, to expect that both the House and Senate Intelligence committees and former top intelligence officials—the most experienced the nation has—would be concerned, as they all are, about the deteriorated condition of American counterintelligence.

Little or No "Counter" in U.S. Counterintelligence

A counterintelligence service, as already noted, is not simply passive or largely reactive. It does not identify a spy, say, and then merely watch him operate until it has collected enough evidence for his prosecution under espionage statutes, although effective counterintelligence will quite often lead to that end result. Ideally, it uncovers a spy before he has had the opportunity to carry out his mission and then moves aggressively against him to see that he never succeeds in obtaining the type of information he is after.

Similarly, in the case of Soviet active measures, it does not seek merely to identify and observe them with the idea of obtaining prosecutive evidence should they involve a violation of some criminal law. Rather, no matter what their nature or who is working to effect these measures, counterintelligence takes positive action to prevent the achievement of their purpose or at least to limit their effects.

When the Levi domestic security investigations guidelines for the FBI were being developed in 1975 and the early part of 1976, all early drafts included a section titled "Preventive Action." However inadequately, this section recognized the traditional "counter" element in counterintelligence even as it applied to the domestic scene. It did so, however, in a very narrow and limited way.

It authorized the FBI, dependent upon specific approval of the Attorney General, to undertake "non-violent emergency measures" to *obstruct or prevent* a planned violation of federal law, but only if the violation involved the use of force and violence or posed a threat to life or property destruction that would impair "essential" government functions and Bureau action was "necessary" to minimize the damage to life or property.

According to the Levi draft provisions, the Bureau was to stand by and do nothing while many other violations of federal law engineered by hostile foreign powers took place. It would do the same if the force and violence planned did not threaten human life, or if the property damage planned (no matter how extensive) would permit continuation of essential government activity. (Many terrorist bombings of earlier years would have been immune to FBI counteraction under these provisions.)

Yet even this "Preventive Action" section, as weak as it was, was stricken from the FBI guidelines when they were promulgated in the spring of 1976. Attorney General Levi announced that "the guidelines do not authorize the FBI to intervene to prevent such threats [as specified in the drafts] to life or property." He conceded only that in situations of "great human peril" if the FBI asked him for permission to take preventive action, he "might" grant it.[73]

In the domestic security field, FBI was thus no longer a *counter*intelligence agency. It had been demoted to a mere criminal investigative agency that was not even permitted to take action to prevent many heinous crimes, let alone generally protect the national security.

How far, if at all, this ban extended into the *foreign* counterintelligence field is an unknown because the Levi guidelines for FBI operations in that area were largely classified. Those parts of them declassified in May 1978, however, contained two related provisions with disturbing implications. One provided that when the FBI, while using

"extraordinary techniques" for counterintelligence purposes, developed information about criminal activity within the jurisdiction of other agencies, it could disseminate to the agency concerned information about "uncompleted" crimes "threatening endangerment to human life." The other provided:

> Nothing in these guidelines shall limit the authority of the FBI to inform any individual(s) whose safety or property is directly threatened by planned force or violence, so that they may take appropriate protective safeguards.[74]

One cannot be certain because most of the foreign guidelines remained classified, but both of those provisions surely read as though the FBI itself could take no action, even in the foreign counterintelligence area, except to notify a person whose life or property was threatened *so that he or she* (not the FBI) *could do something* to prevent the threatened violence.

Bolstering this view is the fact that when the guidelines were declassified in part, a top Justice Department official stated in a covering letter that "all of the excisions [still classified parts] address sources and methods of investigation and their applicability to certain categories of subjects." Such matters, it would seem, would not embrace FBI counteraction authority.[75]

Also revealed in his letter was the fact that the section having to do with the dissemination of information acquired by extraordinary techniques "was recently issued" [as of May 23, 1978]. This indicates that for over two years the restrictions on Bureau dissemination of such information had been so extreme that it could not even counteract to the extent of notifying other agencies about pending, life-threatening crimes within their jurisdiction.

The foreign counterintelligence guidelines of Attorney General Benjamin R. Civiletti, which superseded the Levi guidelines on May 1, 1980 and are still in effect, have also been declassified, of course, only in part. They authorize the FBI to detect and *prevent* espionage, sabotage, and other clandestine intelligence activities "through such *lawful* counterintelligence activities" as are necessary and to detect and *prevent* international terrorism "*through such operations*" as are necessary.[76]

If the difference in the above-quoted and italicized words was intended rather than being an editorial slip, the current (Civiletti) foreign counterintelligence guidelines confer unlimited preventive action or "counter" authority on the FBI when it is dealing with international terrorism, but limit it to "lawful" counterintelligence activities in its efforts to counter espionage, sabotage and various other hostile operations.*

Just what are "lawful counterintelligence activities"? It is not known. The term is apparently not defined in the guidelines. Their partially declassified text reveals that 21 terms used in them, alphabetically arranged, are defined in the "Definitions" section, with the text of five of the definitions deleted (classified). One of these five deletions is so located in the alphabetical sequence that it could be a term beginning with the letter "l" (or any other letter from "i" to "p"). Because such general, non-sensitive terms are usually not classified, however, and because the term was definitely not defined in the Levi guidelines though used in them, it is highly unlikely that this classified deletion is a definition of "lawful counterintelligence activities."

What the FBI is allowed to do today in trying to counter espionage and certain other

* The Levi foreign counterintelligence guidelines had the same basic provisions, requiring "lawful" operations in the first instance but imposing no such limitation in the second.

hostile foreign activities is thus not specified. Presumably, the Attorney General and/or his Counsel for Intelligence Policy decides what is lawful and unlawful in these areas of counterintelligence activity.

The clear distinction between the two types of counter authority authorized by the above words in the guidelines, however, indicates that there are now definite limitations on actions the FBI can take to try to prevent such serious threats as espionage, sabotage and "other clandestine intelligence activities" carried out in this country "by or pursuant to the direction of foreign powers."

The "General Prohibitions" section of the Civiletti guidelines is completely classified (presumably so that foreign intelligence agencies will not know what they can get away with), with the exception of one subparagraph which is not relevant to the subject of counteraction. Whether, and to what extent, the section may bar effective counteraction is therefore not known.

The only clue to the Bureau's counteraction power in the Civiletti provisions is in one declassified paragraph concerning its general authority to *collect* foreign intelligence and foreign counterintelligence information. In such collection

> the FBI shall not use drugs, physical force *except in accord with the law, or any technique contrary to law or fundamental standards of due process under the Constitution and laws of the United States.* (Emphasis added.) [77]

The exact extent of the limitations included in the italicized portions of that quotation could be argued endlessly, but they are clearly great and probably a good indicator of the restrictions on its counter action authority.

The domestic security investigations guidelines issued by Attorney General William French Smith which became effective on March 21, 1983, contain no provisions relating to preventive action. They do refer to the Bureau's duty to prevent violations of federal laws, but only in the context of the general duty of all law enforcement agencies to prevent the commission of crimes within their jurisdiction. The words "national security" appear nowhere in the guidelines, nor do they contain any mention of a Bureau duty or power to counter dangers or threats to the internal or domestic aspects of national security which do not violate federal laws, whether they are domestic in origin or foreign-instigated.

From the counter-action viewpoint, they made no change in the situation that existed under the Levi guidelines. That situation has been described authoritatively. In 1978, Deputy Attorney General Civiletti testified that "the COINTELPRO types of activities...are now absolutely prohibited." [78]

And during the same hearing FBI Director Webster testified, "The COINTELPRO program is just wiped off the books; there isn't anything comparable to it in the Bureau, nor can there be." [79]

Interrogated earlier in 1978 about FBI "preventive action," FBI Associate Director James Adams responded, "We are not talking about neutralization, disruption, and that sort of activity which took place during the COINTELPRO actions of years past." [80]

Did the FBI undertake any efforts to neutralize the activities of domestic security groups? Adams: "No; not in the sense that it was used under the COINTELPRO actions." [81]

Adams gave some examples of Bureau "preventive action." An FBI special agent had penetrated a terrorist group in an undercover role and learned of an assassination plot and a plan to bomb the office of a state senator. The terrorists were indicted and arrested, the plot foiled. A hate group involved in civil rights violence acquired a cache of grenades. The

Bureau obtained a search warrant and confiscated the grenades, thus preventing their use.

Adams summarized FBI preventive action by saying that

> we try to pursue the matter until we can develop a prosecutable violation.... By taking these individuals off the street, we insure that they will not commit the act on a subsequent date as long as they are incarcerated.[82]

That is good criminal law enforcement. In his testimony Adams admitted problems, however:

> This becomes a very delicate question at times as to whether we have sufficient control over this situation.... In some instances, if you are unable to develop a prosecutable case, then it is necessary to just go out and interview the known participants in order to let them know that you are aware of their anticipated plans and hope that you discourage the activity....[83]

This is, again, good law enforcement, but not action that eliminates or weakens threats in the non-criminal security area.

Director Webster expressed the FBI's preventive action responsibility as follows:

> [O]ur responsibilities in foreign counterintelligence go beyond those of domestic security investigations in that we have a responsibility there to neutralize the impact of foreign efforts to gather intelligence in this country, whereas we have no such responsibility to neutralize activities in domestic security....
>
> In foreign counterintelligence, we do engage in *legitimate efforts* to confuse foreign activities, and to make them consume substantial amounts of their available time wondering about the effectiveness of their operations. (Emphasis added.) [84]

In view of what is known about the Levi-Civiletti foreign counterintelligence guidelines (see also section on "Overly Restrictive Guidelines"), one wonders about the nature of the "legitimate" efforts Webster was referring to.

The Senate Intelligence Committee discussed some of the major counterintelligence problems it perceived (including a number treated in this study) in its annual report for the years 1979–80. One concerned hostile interference in our "economic and political system through the use of witting clandestine agents and accessories" (including those from nations not technically within the Communist bloc) by "covert action." Commenting on the difficulty of identifying such agents, the Committee stated, "In the past, these kinds of activities came under the heading of counter-subversion which, along with counter-espionage, is important to our national security." [85]

The problem, the Committee said, deserved further attention although this country is limited by its political system in the extent to which it may act to cope with the problem. The panel has since said nothing further on the subject. In the meantime, there is, tragically, no "counter-subversion" by the FBI or any other counterintelligence agency in the United States. As far as the U.S. government is concerned, the Soviet Union—and all other nations—have a completely free hand in undertaking active measures to undermine the U.S. To a very limited degree, the FBI can collect intelligence about such activities but it can take no positive action to defeat them.

This lack of a counter-subversion capability is one of the major weaknesses in the nation's "counterintelligence" posture. Because of it, the national security of the U.S. is endangered to a degree its citizens are largely unaware of.

Manpower Shortage

For security reasons, neither the total number of U.S. intelligence personnel nor the division between those assigned to "positive" collection and counterintelligence is supposed to be revealed. Despite this, sufficient information has been made public to demonstrate that U.S. intelligence/counterintelligence manpower and funding is inadequate.

In January 1976, then Senate Majority leader Mike Mansfield stated that since 1969 "the total number of intelligence agency employees has dropped from 142,000 to 80,000 at present—a reduction of 43%." To Mansfield this was "a trend in the right direction." He opined "I would think we need to pare it still more." A few weeks later, he stated that the 43% figure applied to "all the intelligence agencies, with a few exceptions." [86]

A 1976 Church Committee report stated that "the number of intelligence workers has declined sharply over the past several years" and, in support of its claim, cited figures that fairly closely resembled those of Mansfield [87]

Year	*Total Manpower*
1968	153,800 (all-time high)
1975	101,500
1976	89,900 (planned)

The Committee also said the real value of intelligence appropriations had declined steadily since reaching a high in 1966 and that the 1976 budget would be "about equal in buying power to the budget of the late 1950s." [88]

What has happened since 1976?

More cuts in appropriations, and therefore manpower, followed for several years. The 1978 authorization report of the Senate Intelligence Committee for the Community's 1979 budget noted, for example, that while "demands for better and more timely intelligence have continued to increase" since 1970 (despite Senator Mansfield's implications to the contrary), "manpower has been reduced by about half," and that during the past decade the cost of intelligence "has shown a steady decline." During the House debate on the 1979 budget, Rep. Bill Burlison of the House Intelligence Committee stated, "We made very substantial cuts in the recommendations of the President." [89]

It was not until 1980 that the intelligence committees—for a change—recommended an increased intelligence appropriation and Congress voted for it. Recent modest increases, however, have not closed the dollar-personnel gap that widened over so many years. In the 1983 Senate debate on the intelligence appropriation for 1984, when the Administration again received less than it had requested, Senator Malcolm Wallop, managing the authorization bill for the Intelligence Committee, warned that "we have a long way to go" and that "Congress will have to authorize more money" in future years.[90] The committee authorization report stated that past "resource constraints" had "seriously" limited and degraded the Community's ability to meet the nation's intelligence needs.[91]

Precise figures on FBI personnel are public, though numbers of those assigned to counterintelligence are not. The Bureau reached its special agent peak in the years 1972–73

when 8,631 were on the payroll. A steady decline followed until 1980, when it reached a low of 7,804. Director Webster had told the House Appropriations Committee in 1978 that it was "very difficult" to accept the then proposed agent cuts and that there was "a very serious question" about the Bureau's ability to do its job because "we are, very frankly, at rock bottom." In 1980, he said "We continue to be at rock bottom.... We have lost 800 agents from 1976 to 1980." He pointed out that, at the same time Congress had thus reduced its special agent force, "you enormously expanded our responsibilities." [92]

The 10 percent cut in FBI agent personnel presumably meant that, given its added responsibilities, there would be a cut of at least the same percent in the number of agents it could assign to counterintelligence.

As President Reagan noted in his remarks at the FBI's 75th Anniversary celebration in July 1983, the Bureau had been given money for more agents in 1982 "for the first time in many years." [93] In 1983, the Bureau's budget totaled more than $1 billion for the first time in its history. The figure included a large, unrevealed increase for foreign counterintelligence. As of the end of March 1983, however, the FBI still had only 7,990 special agents—more than 600 less than it had had 10 years earlier.

As long ago as 1974, FBI Director Clarence Kelley told a group of reporters that he was thinking of asking for 250 additional agents because he did not have enough to keep track of the foreign spies in the U.S. His budget would not permit the one-to-one ratio he believed desirable. Instead of getting more agents, however, he began to get fewer.

Attorney General Willian F. Smith, described the problem further to the Los Angeles World Affairs Council in December 1981:

> At one time the FBI could match suspected hostile intelligence agents in the United States on a one-to-one basis. Now, the number of hostile agents has grown so much that our FBI counterintelligence agents are greatly outnumbered.[94]

In less than a 20-year period, there had been a major change in the foreign spy-vs-FBI counterintelligence special agent ratio, according to W. Raymond Wannall, former intelligence chief of the FBI. The Bureau had one counterintelligence special agent for each known or suspected Communist bloc spy in the early 1960s, but by the time Wannall retired in 1976 there was only one Bureau agent for every four-to-five Communist bloc spies.[95]

The one-to-one ratio mentioned by Smith and Kelley is far from adequate. Even two-man surveillance teams are not enough. At least six-man teams are necessary, both day and night, to keep track of one known spy. In addition, others are needed for electronic surveillance, for investigating his contacts (which may later require more full surveillance teams), etc. Full 24-hour surveillance actually requires 15 to 20 men per day. When an important action is expected, area coverage could well require the presence of scores of FBI counterintelligence agents.

Numbers alone do not tell the full story of CIA, FBI and other counterintelligence agency personnel losses. Quality is also involved.

James Angleton was chief of counterintelligence at the CIA from the late '40s until the end of 1974, when CIA Director William Colby forced his resignation. A 31-year veteran of the Agency, Angleton had built up a highly competent staff to assist in the Director's statutorily imposed mission "to protect intelligence sources and methods from unauthorized disclosure." Colby's action forced three of Angleton's top counterintelligence aides to resign in protest at the same time, thus eliminating the entire top command of CIA counterintelligence. Colby then broke up the counterintelligence division, scattering its respon-

sibilities throughout the CIA with the result that they were frequently handled by inexperienced personnel.

Beyond the major damage to morale which the engineered resignation of the agency's four top counterintelligence officials had on the other counterintelligence employees, Colby's clear antipathy toward the four (and other factors) brought on the resignation or early resignation of many of the most experienced counterintelligence practitioners in the nation's principal foreign intelligence agency.

A somewhat similar situation developed in the FBI. Differences between FBI Director Clarence Kelley, along with other top FBI officials, and President Ford's Attorney General, Edward Levi, were apparent in 1976. After he became President in 1977, Jimmy Carter forced Kelley's retirement, replaced him with a judge who had no intelligence/counterintelligence knowledge or experience, and made it clear that there was going to be a "new order" in the FBI.

Optional (early) retirements of FBI special agents had begun to escalate during the Ford Administration. Early in 1977, Washington press accounts noted that "hundreds of agents are retiring" and that because of retirements, "much of the top echelon of the FBI is going to change within the next few months."

In the spring of 1978 Director Webster revealed in Congressional testimony that by January of that year the Bureau had lost about 600 agents through retirement in that fiscal year and that another 400 were expected in fiscal 1979. He also revealed that 516 special agents had retired in the two-month period, December 1977–January 1978.[96] Some were due to a law requiring retirement from the FBI at the relatively early age of 55, but many were due to the "new order." A large number of the most experienced counterintelligence agents were among the retirees.

Reporting on the state of U.S. counterintelligence in 1981, the Senate Intelligence Committee pointed out that one of the things it had been examining was "the effects of personnel cuts and early retirements, which have reduced significantly the number of counterintelligence experts with over 20 years of specialized experience." [97]

An FBI official, testifying before the House Intelligence Committee in 1979, gave an indication of what was causing so many retirements. He quoted a recent retiree as saying shortly before he left the FBI:

> Gentlemen, where else is the federal government paying me not to investigate? If I do investigate, I can't keep a record. If I could keep a record, I can't disseminate it. And if I disseminate it, I have got to excise it and purge it. So it is, in a way, for a veteran of almost 30 years in the FBI, [that] I feel as though I am not earning my money.[98]

In 1974, when Kelley wanted 250 more FBI agents to track Soviet spies, there were 1,647 Soviet-bloc official personnel in the U.S., an estimated 40 percent of whom (over 650) were actual or potential spies. In 1981, when Smith said the FBI counterintelligence agents were "greatly outnumbered," the total was 1,790, representing about 790 hostile agents—an increase of 323 or almost 20 percent. By 1982 it had jumped to 2,131, adding 161 more individual worries to the Bureau's ever-growing list of potential Soviet bloc spies.

Additionally, there are the personnel of the Chinese delegation to the U.N. and in its Washington Embassy to worry about (both have grown at a great rate), plus the Cuban U.N. Mission and its Interests Section in Washington. Beyond these there are the "illegals"—the deep-cover spies who do not have diplomatic immunity: some 20,000 Soviet seamen who visit about 40 different U.S. ports each year; tens of thousands of Communist bloc visitors, plus trade, cultural and other exchange delegations; a few thousand

Soviet immigrants per annum; and thousands of Communist bloc exchange and other students (an estimated 12,000 Chinese in 1984). (The Church Committee reported that the FBI identified over 100 intelligence officers among the 400 Soviet students who studied here in the years 1966–76).

Referring to the many thousands of Soviet seamen who called at U.S. ports during his last year in the FBI, Wannall testified that "there was no way of trying to find out what they were doing." [99]

The FBI's counterintelligence problems reach "astronomical proportions," former director Kelley pointed out some years ago in noting that 55,000 Communist bloc visitors were in this country in 1975. John Barron, authority on the KGB, wrote in 1978, "So many Russians freely roam the United States that at any given time no government agency knows precisely how many are here, where they are or what they are doing." [100]

The Bureau's counterintelligence concerns extend far beyond the Communist bloc, as numerous as its agents are. In the Middle East and former colonial areas of the world—the "Third World"—there are many nations with no love for the U.S. A considerable number of them have openly or neo-Marxist governments and are little more than Soviet client states. Most have U.N. delegations in New York and embassies or other offices in Washington, all of which place added demands on the FBI.

Counterintelligence, of course, is not the only responsibility of the FBI with its present force of about 8,000 special agents. Along with it, two other programs have top priority—organized crime and white collar crime—and its anti-terrorism program is now also being given higher priority. In addition, there are a dozen or so other special programs related in one way or another to its general law-enforcement mission—each with its manpower demands. The Bureau now has added responsibilities in the narcotics field. Thus only a minority of its special agents are assigned to counterintelligence.

Personnel numbers alone are never an indicator of quality performance. But whenever a force is greatly outnumbered by its opponents in a situation in which numbers are essential, success in achievement of mission is virtually impossible.

Loss of Institutional Memory

The United States probably stores more information on every conceivable subject than any other nation in the world. It does so because it recognizes the value of knowledge in all fields. Moreover, it is obvious that no one can learn all that everyone else in his field has known and that few indeed have the gift of total recall, enabling them to remember all that they themselves have learned. The nation's vast file and index system helps overcome these knowledge problems. Through it, forgotten information—and information the seeker never knew existed—can be retrieved for current use.

Extensive counterintelligence files containing information accumulated over the years on foreign intelligence/counterintelligence services, their agents and associated groups and individuals in all parts of the world are obviously essential—indeed crucial—to effective current counterintelligence.

But they are not a complete answer to the knowledge problem. In counterintelligence, as in all other fields, all information collected is not filed. It is simply not possible. Bits and

pieces of information, important and seemingly unimportant (which could later be very important), reside only in the memories of individual officers.

This is why a careful gradual, controlled turnover of career personnel in all institutions is highly desirable. It provides a continuing pool of experienced "old timers" whose institutional memory—their combined recollections of past unfiled events—contributes greatly to current effectiveness by filling the knowledge gaps in the filing system.

Unfortunately for the effectiveness of current counterintelligence needs, both the CIA and FBI have certainly not enjoyed such gradual, controlled personnel changes. Both have suffered from an unusually rapid loss of their most experienced personnel.

In 1973, CIA Director James R. Schlesinger fired about seven percent of the personnel in the CIA's Clandestines Service. Just how many were dismissed is not known, but his successor, William Colby—who agreed with and assisted in the action—has written that it was "thousands." [101]

As already noted, Colby in 1974 did what he had unsuccessfully urged Schlesinger to do the year before. He forced the retirement of James Angleton, CIA chief of counterintelligence, and the entire top echelon of his staff. This was followed by Director Stansfield Turner's "Halloween Massacre" of October 1977, in which he fired over 800 officers in the Clandestine Service. For the most part, as in the Schlesinger action, they were the older, most experienced officers.

Not all of those dismissed by Schlesinger and Turner were counterintelligence officers; most were not. But all Clandestine Service officers receive counterintelligence training and, even if all their work has been in collection and/or covert action, their institutional memory can still be highly useful to counterintelligence.

There were 400 reported CIA retirements in 1977, 650 in 1978 and almost 200 more in just the first month of 1979.[102] As noted, a 1978 Senate report stated that, since 1970, U.S. intelligence manpower "has been reduced by about half." Admiral Inman summarized the situation during his 1981 confirmation hearing, reporting that

> we have a generation gap here. We have in fact lost, across the community, a lot of people who came in the 1940's, who enjoyed the business and who stayed for a career. A variety of reasons...have caused large numbers to retire.[103]

The FBI lost about 1,000 agents during the years 1972–1978 because of budget cuts, as previously indicated. Like the CIA it has also suffered from an unusually high retirement rate in recent years, principally of its most experienced agents. W. Raymond Wannall, retired assistant director for intelligence, has stated that in the few years before he retired in 1976 "over 3,000 agents left the FBI.... And many of those agents had spent their careers in intelligence [i.e., counterintelligence]." [104]

A compulsory retirement-at-age-55 law affecting FBI personnel went into effect in 1978, but many left earlier for, as Inman said, "a variety of reasons" which need not be explored at this point.

An early 1977 news account of FBI Director Kelley's retirement reported that the new compulsory retirement law (applicable only to law enforcement, fire-fighting and similar physically-demanding federal positions)

> will require between 555 and 650 senior agents to go too. That means that more than half the bureau's force of approximately 8,000 agents will be younger than 35.[105]

There is not a lot of institutional memory in those under 35, who were to comprise the majority of FBI agents. Add to the above figures those described in the last section in regard to firings and early (unrequired) resignations in the CIA, as well as the overall

Community manpower losses, and it becomes clear that, among other factors affecting performance, the 1970s exodus of large numbers of older, experienced personnel has struck a heavy blow at the institutional memory of U.S. counterintelligence—no doubt to the considerable delight of hostile foreign intelligence services.

Lack of A Common Data Base

A U.S. counterintelligence officer or agent routinely operates with four informational assets: his agency's files; his own cumulative knowledge; his co-agents' institutional memory; and such information as "friendlies" may provide him.

He should have a vital fifth asset, but normally doesn't. It is all the information in the files of other U.S. counterintelligence agencies.

The CIA has its counterintelligence files. The FBI has separate files, as do the DIA, the counterintelligence units of the armed services, and those of other agencies with counterintelligence authority. Under this system, a counterintelligence officer/agent working a case normally starts out without all the information he could or should have. At best, this gap will make his task unnecessarily more difficult; in some cases, it can mean full or partial failure.

Of course, there is liaison and exchange of information between the FBI and CIA in the counterintelligence field. Its quality has varied. For some time now, CIA and FBI officials have been saying it is excellent, better than ever before, etc. It may well be so—but that does not solve the basic problem of the agents continuing, sometimes urgent, need for the ready availability of all relevant information as he initiates and works a case.

In practice, FBI–CIA cooperation is good when a case is seen as major or important. In routine, day-to-day work, however, it is perceived as bothersome, an added complication and delay. The tendency is to skip it. It is too much trouble.

Ten years ago, the Institute for the Study of Conflict (London) prepared a report, "New Dimensions of Security in Europe," part of which dealt with problems of terrorism and the response to it. That part of the response section which covered national "Internal Action" noted that most nations of Europe had several intelligence services—foreign, internal, police and armed services—and recommended that the intelligence gathered by these separate organizations "should be pooled and centrally assessed." [106]

The logic of this proposal is unassailable, presuming the nation concerned wanted to develop the best possible response to terrorism. The ultimate quality of the response is inevitably based on the quantity and quality of the intelligence available to the counter-terrorism agency. It would be ridiculous to deny it any intelligence at hand.

And the same is true of U.S. counterintelligence. Adequate, effective response to foreign threats which are the province of counterintelligence — espionage, sabotage, terrorism, assassination and subversion — demands the utilization of all available intelligence, no matter who its holder may be.

The 1978 Carter Executive Order created a Special Coordinating Committee in the NSC whose duties included "Developing and monitoring guidelines...for the maintenance of central records of counterintelligence information." [107] Nothing came of the directive, probably for reasons noted in the section on analysis and because it also ran into agency opposition to the idea.

The report of the Senate Intelligence Committee covering its work during the years 1979 and 1980 said the committee has studied the question of "centralized counterintelligence files and an organization with authority to co-ordinate a complete counterintelligence program." [108] It reported no conclusions, however, and has had nothing further to say on the subject.

The 1981 Reagan order directs that

> all [intelligence] agencies and departments should seek to ensure full and free exchange of information in order to derive maximum benefit from the United States intelligence effort.[109]

Good. But not enough. If the directive were being followed, there would be an ongoing, daily, massive exchange between all counterintelligence agencies of information in their respective files. But this is not taking place. And the idea that there would be only rare occasions when CIA information would be useful to the FBI, or vice versa, is not tenable. Moreover, if the desirable level of exchange were actually taking place, it would be highly wasteful of time, talent and money, an extraordinary volume of unnecessary paperwork that could be eliminated by centralization of files.

There is inherent opposition to sharing information in the intelligence community. Each agency has a proprietary jealousy in regard to its own files, and is resistant to the idea of losing complete control of them. Centralization, admittedly, would be a major task, involving some complicated problems.

But the controlling factor here should not be the difficulty involved or the various agencies' excessive concern about part of their turf; it should be the best interests of national security, which would clearly be better served by file centralization.

Excessive Number of Directives

Most U.S. counterintelligence units—those in the CIA, DIA, military intelligence services, etc.—have a relatively simple mision: "straight... counterintelligence." The principal agency, the FBI, has a more complicated problem. As the investigative arm of the Department of Justice, it is the chief federal law enforcement agency, responsible for developing prosecutive evidence for violations of some 200 federal statutes in its jurisdiction. In this area it must abide by the criminal standard and other limitations and procedures that apply to law enforcement. At the same time, however, it is also the nation's chief foreign counterintelligence agency and principal domestic intelligence gatherer. In these areas, its mission is not evidence for prosecution, but the accumulation of knowledge that will make possible effective national security counteraction.

For many years, all FBI special agents had two basic reference works to assist them in the performance of their varied duties. They were:

- First, the *Manual of Instructions* (now the *Manual of Investigative Operations and Guidelines*). Currently, this is a three-volume compilation totalling several hundred pages of information about each of the statutes over which the Bureau has jurisdiction, with

details about the elements of each statute, step-by-step procedures for investigating violations, and related matters.

• Second, the *Manual of Rules and Regulations* (currently the *Manual of Administrative Operations and Regulations*), now a volume of more than 100 pages of information concerning personal conduct, working conditions, leave and similar administrative and personnel matters.

Both manuals were and are of the loose-leaf type so that new or revised material can be added and outdated matter removed. These two basic volumes were supplemented by routine communications of various types—"SAC Letters" with instructions special agents in charge of field offices were to pass on to subordinates; "Airtels" with information on the handling of different programs or operations; and memoranda and teletypes on case files and other current business.

The information FBI agents had to absorb and live by was quite voluminous, but not beyond their capabilities. Ten years ago, these two basic guides were much shorter, simpler volumes than they are today. The system worked well.

During the past eight years, however, agents have been swamped with a whole new series of lengthy, confusing directives covering their counterintelligence duties, directives they must abide by at the risk of disciplinary action. It is not claimed that the following is a complete list of all such orders and regulations, but it is sufficient to make a point about performance:

President Ford's Intelligence Community Executive Order of February 18, 1976 (36 pp.).

Domestic Security Investigations Guidelines, Attorney General Edward Levi, March 1976 (20 pp.).

Foreign Counterintelligence Investigation Guidelines, Attorney General Edward Levi, May 18, 1976 (19 pp.).

Informant Use Guidelines, Attorney General Levi, January 1977 (5 pp.).

Guidelines on the Handling and Dissemination of Unsolicited Information, Attorney General Levi, 1976.

President Carter's Intelligence Community Executive Order, January 24, 1978 (26 pp.).

Guidelines on Dissemination of Information for Foreign Counterintelligence Purposes, promulgated by Attorney General Griffin Bell, February 1978 (applied only to information acquired by "extraordinary techniques").

Criminal Investigation Guidelines, Attorney General Benjamin Civiletti, December 1980 (12 pp.).

Informant and Confidential Source Guidelines, Attorney General Civiletti, December 1980 (13 pp.).

Undercover Operations Guidelines, Attorney General Civiletti, January 1981 (18 pp.).

Foreign Counterintelligence Guidelines of Attorney General Civiletti, May 1980 (47 pp.).

President Reagan's Intelligence Community Executive Order of December 4, 1981 (17 pp.).

Guidelines on Domestic Security/Terrorism Investigations, Attorney General William French Smith, March 7, 1983 (19 pp.).

> Standards and Procedures for the Transmittal of Personal Information to Hostile Foreign Intelligence Services through Double Agents.

Each one of these directives (and there were others) set new conditions agents had to live by. Each one was superseded in relatively short order by another which changed the rules. Not all were clearly worded. Addressing an American Bar Association meeting in 1980, at a time when less than half the above-listed directives had been issued, FBI Director William H. Webster said, "Regularly, our agents return to Washington to discuss...revisions in policy or guidelines that affect foreign counterintelligence work."[110]

Not surprising. But is this the way to conduct an "extraordinary" counterintelligence effort?

In 1983, answering a series of questions for Sen. Jeremiah Denton, chairman of the Senate Subcommittee on Security and Terrorism, Webster noted among other FBI concerns,

> the growing complexity for field agents of distinct sets of guidelines that have been adopted over the years providing different standards, different reporting periods, and different approval levels for the investigations that are closely related.[111]

When the new, more concise, allegedly superior domestic security/terrorism guidelines of Attorney General Smith were unveiled at a March 7, 1983, press conference, Webster said,

> We just can't—we train and retrain, and we can't expect our agents to carry around all the nuances and subtleties of different sets of guidelines.... Agents don't have to be shifting gears in their minds or going back to their supervisors for this [under the new Smith guidelines].[112]

The new Smith guidelines themselves, of course, required more training. With questionable implication about their superiority, and thus of their permanency, Webster added:

> We can train them [about these]. In fact, we're already planning a series of seminars around the country to make sure that these are implemented promptly and correctly.[113]

Joseph A. Sizoo, president of the Society of Former Special Agents of the FBI, supported the concept of FBI guidelines in testimony before the Senate Subcommittee on Security and Terrorism in 1982. But he virtually pleaded for guidelines "which will not be subject to change by every new administration." [114]

The FBI has not been the only agency affected. Others may not have the law enforcement-statutory complication, but executive orders have also required the promulgation of various guidelines for their operations, which in some cases have been supplemented by agency regulations of various types—with the result that they also must now operate from changing manuals of considerable length.

Admiral Inman made a very brief but telling comment on this obstacle to effective counterintelligence performance in a 1983 speech, when he said "Think of the poor operative in the field trying to observe a manual 130 pages long of 'thou-shalt-nots'." [115]

Crippling Restrictions in Directives

A lengthy book would be required to analyze all the executive orders, guidelines and supplementary internal regulations promulgated during the past eight years and the manner in which they have unduly restricted the collection of counterintelligence and intelligence on which the national security so heavily depends. Only a few examples related to the subject of counterintelligence can be cited here.

Addressing a group of leaders of the Veterans of Foreign Wars in 1976, William Nelson, retiring deputy director of operations for the CIA, stated that the Agency was then barred from interviewing American travelers from abroad who had been in contact with Soviet agents—because of prohibitions in the Ford executive order of February 1976.[116].

A 1979 staff report of the House Foreign Affairs Committee stated that because the Ford and Carter orders "prohibit intelligence gathering on U.S. citizens, the CIA was legally proscribed from engaging in any activities vis-a-vis the People's Temple" in Jonestown, Guyana, where over 900 Americans were murdered by the Communist Rev. Jim Jones and his followers in November, 1978.[117]

FBI Director Webster has said that the Levi domestic security guidelines had no bearing on the outcome of the events in Jonestown. The Foreign Affairs Committee report, however, stated that the FBI received complaints about Jones' U.S. activities and conducted some interviews but terminated its investigation "because no violation of the Federal kidnapping statute had occurred." [118]

That, in essence, was the criminal standard in the Levi guidelines in operation. Had the FBI been operating perceptively on an intelligence standard, the outcome obviously might have been vastly different, despite the limitations on what the CIA could do abroad because of the Executive orders. Jones, it will be remembered, had extensive contacts with the Soviet Embassy in Georgetown, discussed moving his colony to the USSR, and willed that his estate of millions of dollars be given to the U.S. Communist Party if his widow or children did not survive his death by six months.

Senator Birch Bayh, then chairman of the Senate Intelligence Committee, stated in 1980 that "Current restrictions on physical search under the [Carter] Executive Order procedures are very stringent." [119] In that same year, a Senate Intelligence Committee report shed more light on the subject, stating,

> Classified procedures approved by the Attorney General pursuant to the Executive order place *further limitations* on unconsented physical searches conducted without a judicial warrant. (emphasis added).[120]

Clearly, in some cases, the publicly revealed "very stringent" limitations on U.S. counterintelligence have been only the tip of the iceberg. There have been additional restrictions that, because of classification, will never be known.

FBI Director Webster, in 1981 appropriations testimony, said he thought FBI–CIA coordination, particularly in the area of terrorism, could be improved. Asked to explain this statement in '82 hearings, he replied in part:

> There has existed, we believe, some confusion on the part of other agencies in the U.S. intelligence community arising from the language of Executive Order 12036 [Carter] as to

the authority for the dissemination of information pertaining to U.S. persons. This misconception has hindered their willingness to completely collect and share counterintelligence information [due to] an overly strict interpretation of the dissemination procedures as they pertain to U.S. persons.[121]

Like the FBI, all intelligence agencies have offices of legal counsel to advise them on the meaning of all orders and regulations governing their activities, as well as on other legal matters. When these legal experts could not agree on the precise meaning of various prohibitions in controlling directives, the directives were obviously defective. More important, however, is the fact that their generally restrictive tone fostered an overly limiting interpretation of specific provisions with the result that important counterintelligence information was, as Webster admitted, "lost."

And who is to say whether, in this case, the FBI's lawyers or those in the other agencies were actually correct in their interpretation of the provision at issue?

The following account of how the Carter Executive Order unreasonably restricted CIA collection of counterintelligence information abroad is excerpted from an article the author wrote a few years ago:

Imagine that you are a CIA officer stationed in some distant country in Asia, Africa or South America. Having been there for some years, you know who the local Communist leaders are and, to your satisfaction, have identified two foreigners resident there as KGB.

Suddenly a new man arrives on the scene. You learn that he is a resident alien from the U.S. who emigrated to the States from an East European nation five years ago and is allegedly vacationing. You observe him meeting with a prominent local Communist and also with one of the KGB agents in public places. You also learn that these same two people are visiting him for lengthy periods in his hotel room.

You *know* you should find out what is going on between him and his two contacts. The idea of bugging his room occurs to you as an obvious solution to this problem.

But you cannot do that under the Carter order. Why? Because it classifies a resident alien as a 'United States person' and says no intelligence agency can tap, bug, or use any other intrusive intelligence technique against a U.S. person without the explicit, personal approval of the attorney general. Moreover, the attorney general cannot grant approval unless, from thousands of miles away, he determines there is 'probable cause' to believe the person in question is the agent of a foreign power.

You want quick action because you are not sure how long the man will be around. Being in a friendly country and having contacts with its intelligence service, you naturally think of having one of its agents do the bugging for you.

But you cannot do that either—because the Carter order forbids your asking or encouraging 'directly or indirectly, any person, organization or government agency,' anywhere, to do what you cannot do.

There is only one thing you can do—follow the 'lawful' route prescribed in the Carter order. So you send an urgent cable to CIA headquarters asking that it obtain the attorney general's permission for you to plant a bug ('Thank God,' you say to yourself, 'Ramsey Clark is not attorney general now.'). The CIA agrees you have a good case and forwards your request.

But the attorney general is off addressing a convention of the American Bar Association in Hawaii, London, or some other distant spot. When he gets back, he agrees with the CIA's assessment.

Then there's another delay. Griffin Bell boasted that throughout his tenure as attorney general only one U.S. person (citizen Ronald Humphrey, convicted of espionage with David Truong in 1978) was subjected to an intrusive investigative technique and then only

after he (Bell) had consulted the President about the case. Further, Bell had promised, he would *never* consent to a bug, tap, etc., on any U.S. person without first getting the personal approval of the President.

Jimmy Carter is on vacation in Plains, Ga., and Bell does not want to bother him about so minor a matter as bugging someone who is merely meeting a couple of Communists in some far-off place; the President, he recalls, has proclaimed the silliness of 'inordinate' fear of communism (this is why the Bell subordinate designated to act on important matters during his absence would never have pestered the vacationing President with your request).

Jimmy returns to Washington and, *mirabile dictu*, gives his OK. CIA is notified and cables your long-sought approval.

You tear it up when it arrives—because it is too late. Your man left town three days ago. For a long time you wonder what he was up to.

This is an optimistic picture. Suppose the attorney general or President doubted that your evidence constituted 'probable cause' to believe your target was 'an agent of a foreign power'? Then the FBI (operating under the same restrictions, plus some others) would have to investigate the alien's U.S. activities for additional evidence of his foreign ties before the approval could be granted. And if the Bureau's investigation proved to be fruitless, the help of the CIA would have to be requested to see if it could develop corroborating evidence abroad. How long would all this take and, meanwhile, how much evidence would be lost? And how often, if ever, is lost intelligence recovered? [122]

Consider an intelligence or investigative technique as basic as physical surveillance. Local police here and in all countries use this technique daily in the course of their law-enforcement duties. It consists merely of following someone to observe his activities, contacts, etc., and sometimes involves the use of binoculars or photography to aid the surveillance. It is not considered intrusive; a warrant is not required for its use. Any policeman can use this method anytime, any place, even on the spur of the moment if he sees something suspicious.

But not U.S. counterintelligence/intelligence agencies operating abroad if the suspicious person is a "U.S. person," defined in the Ford, Carter and Reagan executive orders as a U.S. citizen, an alien admitted to this country for permanent residence, or a corporation incorporated or organization organized in the U.S.

Under the Ford and Carter orders they could physically surveil such people (or groups) only if they "reasonably believed" he or she was acting in behalf of a foreign power, engaged in terrorist or narcotics activity and also, in the case of the Ford order, activities threatening the national security. In the great majority of cases, these requirements would demand pre-knowledge of the individual. Spur-of-the-occasion surveillance, which can be highly productive, was virtually ruled out of their intelligence arsenal under the Ford and Carter restrictions.

Moreover, how would a U.S. counterintelligence officer know, in many cases, whether someone (seen with a KGB officer, for example) was a U.S. citizen, or an alien admitted to the U.S. for permanent residence? This requirement, too, would normally require pre-knowledge of the person. Not having it, the officer's inclination would be to let highly suspicious activity go unsurveilled for fear of being accused of violating a presidential directive. Result: important intelligence lost.

The Reagan order loosened somewhat the prior restrictions. It bars only physical surveillance of U.S. persons abroad "to collect foreign intelligence, except to obtain significant information that cannot reasonably be acquired by other means." [123]

Surveillance to collect *counter*intelligence *is not banned*, as it was in the preceding orders.

No doubt the change was made because of the realization that much important counterintelligence information had been lost in the previous six years because of the Ford-Carter restrictions.

The Levi foreign counterintelligence guidelines controlled all activities of the Bureau's Intelligence Division, as well as those of other FBI elements investigating espionage and international terrorism. As declassified, they reveal no special section devoted to prohibitions or restrictions as such, but various limitations are found in scattered declassified paragraphs relating to other matters. More importantly, the covering letter explaining the nature of the still classified portions reveals that they established the following:

> a. Various levels of investigation.
>
> b. Standards of evidence required for the initiation of each level.
>
> c. Limitations on the types of techniques that could be used in each investigative level.
>
> d. Time restrictions for the various levels of investigation.
>
> e. Varied classifications of targets (spies, intelligence officers and agencies, foreign terrorists, foreign visitors to the U.S., etc.), with the above levels and restrictions depending on the country they served and the status of their entry to the U.S.
>
> f. Special restrictions to ensure that domestic groups targeted by foreign powers "are not subjected to overly intrusive investigative techniques," with the Attorney General's personal approval required for the use of any technique "that may be regarded as particularly intrusive.[124]

The 1980 Civiletti foreign counterintelligence guidelines, as declassified, were also revealing. In their largely declassified table of contents, section "V." (5) is titled "*ADDITIONAL* RESTRICTIONS" (emphasis added). Inasmuch as the declassified preceding section titles ("I." through "IV.") do not indicate prohibitions, those referred to by "ADDITIONAL" must be included in either or both of two blacked-out subsections under the preceding "COLLECTION" section.

In addition to those restrictions on collection—whatever they are and however restrictive they are—the ADDITIONAL RESTRICTIONS section contains various limitations in the following areas, some of which are classified and some of which are not: undisclosed participation, organizations, operations outside the United States, contracting, mail covers, TV cameras and other monitoring, consensual monitoring.[125]

The FBI is obviously anything but normally free (for a counterintelligence service) in its efforts to identify and track spies, terrorists and saboteurs.

"Undisclosed participation," for example, refers to the placement of an informant in a group to obtain information about it. Under the ADDITIONAL RESTRICTIONS section, the FBI can place in an organization an informant who could influence its activities in some way (i.e., be more than a rank-and-file, never-voting member) only under two conditions—one of which is this: the Director or Acting Director has determined that "extraordinary circumstances exist" and there is "probable cause" to believe the group "is engaged in" espionage, sabotage, clandestine intelligence activity or international terrorism "pursuant to the direction of a foreign power."

"Reason to believe" is not enough to justify informant placement; neither is "reasonable suspicion" or any other criterion that normally applies to counterintelligence operations. The FBI must meet the *criminal standard* of probable cause. It must, in effect, already have so much evidence about criminal activity in certain areas on the part of the

group that it is almost ready to go before a grand jury to request indictments. On top of that, it must meet the excessive, unreasonable "direction of a foreign power" standard (see below).

On this point, it is worth remembering that FBI Director Webster stated at an American Bar Association meeting in 1980 that "initially, *many* foreign intelligence activities may not involve violations of law." (Emphasis added.) [126]

Also worth recalling is a remark made in 1980 at an Association of Former Intelligence Officers (AFIO) panel discussion of an Intelligence Community charter bill pending in Congress. One of the panel members was William A. Branigan, who had spent most of his 35 years in the FBI in the espionage section of its Intelligence Division and had headed that section for a considerable period prior to his 1976 retirement. The bill under discussion set a "reasonable belief" standard for counterintelligence.

Branigan criticized this, saying that "reasonable belief" equals "probable cause," and probable cause "just doesn't work in counterintelligence." [127]

But the fact that a top espionage authority says probable cause "just doesn't work in counterintelligence" apparently means nothing to those dictating the rules for U.S. counterintelligence activities today. The FBI must have it before it can undertake as basic a counterintelligence step as utilizing an informant.

The foreign counterintelligence guidelines of Attorney General Levi provide an interesting example of how he and his guidelines committee imposed a restriction on U.S. counterintelligence that, according to the Supreme Court, was completely uncalled for.

The first counterintelligence duty imposed on the FBI under the Ford Executive Order was to "detect and prevent espionage, sabotage, subversion... *by or on behalf of foreign powers*..." (author's emphasis). The "on behalf of" was a relatively easy standard to meet. But the Levi guidelines under which the FBI was to carry out this Executive Order mission changed those words to "pursuant to the *direction of* foreign powers." On its face, "direction" is obviously a narrower, more demanding standard, requiring greater evidence before counterintelligence activity could be undertaken.[128]

But what legally comprises the term "direction"? As already noted, the Supreme Court had answered this question in a 1961 decision upholding the constitutionality of a law, a key element of which was the meaning of the words "substantially *directed*, dominated, or controlled." Agreeing with a U.S. Court of Appeals, the Supreme Court held that a person or organization met the directed, dominated and controlled standard by mere "voluntary compliance" with a "line of policy" of a foreign power.[129] This is a relatively low evidence requirement, though actual "direction" is a more demanding standard than "on behalf of."

The Levi committee, however, rejected this Supreme Court holding and substituted a much more demanding requirement for the FBI to meet before it could investigate espionage, sabotage, etc. The guidelines defined "pursuant to the direction of a foreign power" as including the following:

1. control, leadership or policy direction by a foreign power;
2. financial or material support by a foreign power;
3. participation in leadership, assignments, or discipline by a foreign power.[130]

How much time would it normally take the FBI to develop evidence of such scope before it could *begin* to collect information about a suspected espionage agent or saboteur?

In how many cases has it been unduly delayed, or prevented from acting at all because of these excessive limitations on its authority?

Even the Church Committee found that

> the type of activity which is most easy to detect and which may indicate possible espionage does not always satisfy the normal standard of 'reasonable suspicion'.... [E]spionage investigations *must be initiated* on the basis of fragments of information, especially where there may be only an indication of a suspicious contact with a foreign agent and limited data as to the specific purpose of the contact. (emphasis added).[131]

The Civiletti foreign counterintelligence guidelines which supplanted the Levi guidelines in May, 1980—and are still in effect—retained both the "pursuant to the direction of foreign powers" wording and the definition of its meaning contained in the Levi guidelines. The only difference was the addition of the word "or" at the end of item "2.", making "3." an alternative rather than a conjunctive condition.[132]

Since 1976, in other words, the FBI has not been able to use "reasonable suspicion" or "fragments of information" to initiate espionage and other counterintelligence investigations. It must first produce an excess of complicated evidence.

It should be noted that the FBI's continuing investigation of the CPUSA is conducted under the foreign counterintelligence guidelines. Evidence to justify this "subversion...pursuant to the direction of foreign powers" (the Ford order) has been available for years. But suppose the Soviet Union should set up another subversion organization here, or some other foreign power should undertake a similar operation? How long would it take the FBI and CIA (whose assistance would probably be required) to develop the kind of information demanded before such groups could be brought under surveillance?

When President Ford's Executive order was promulgated in 1976, the FBI had been investigating the Communist Party and its fronts (per the FDR and subsequent Presidential directives) for 40 years under its "domestic" or "internal" security functions. As its annual reports and testimony indicated, it also investigated Soviet espionage per its responsibilities in the same area. The terms "domestic intelligence" and "counterintelligence" were used interchangeably to cover both activities. The foreign direction of the CP and of spies was recognized and proclaimed during those years but, because the CPUSA, the spies and the FBI all operated within the U.S., the Bureau's intelligence gathering and counter operations were designated as domestic. The word "foreign" never, or rarely, appeared in association with FBI "counterintelligence." The latter term was clearly understood, however, to embrace hostile foreign activity because it dealt with the internal manifestations of it.

It was therefore expected that when the Levi domestic security guidelines were promulgated per the Ford order, they would—at the very least—continue to provide authority for the Bureau to investigate the CPUSA, its fronts and other domestic activities that would be embraced by the term "subversion" in the Ford order. Perhaps they were actually meant to. But they did not. They were so unreasonably restrictive that this writer predicted at the time that they would bar investigation of the party and its fronts: "All will be immune to FBI investigation." This turned out to be true. Six months later it was revealed that, under their provisions, the Bureau could not investigate the CPUSA (though the Supreme Court had found it an agency of Moscow). Meanwhile, Levi's foreign counterintelligence guidelines had been issued. To avoid the embarrassment of FBI inability to investigate even

blatant instruments of Kremlin intrusion into the internal affairs of the U.S. as a "domestic" security matter, Levi directed that the party be investigated under the foreign counterintelligence guidelines.

The Levi domestic security investigations guidelines were actually bars to anything resembling domestic security. In addition to establishing an ultra-strict criminal standard, permitting only investigation of certain types of violations of a limited number of federal statutes, they set three levels of investigation—preliminary, limited and full—which normally had to be followed in sequence, with each one requiring a prescribed level of evidence.

Next, though they were clearly directed at and limited to, groups engaged in dangerous criminal conduct—groups that by their very nature would be conspiratorial, and covert or clandestine in their operations—they proceeded to bar the use of the most productive intelligence techniques, informants and electronic surveillance (and even mail covers), in the first two levels of intelligence collection. This meant that the Brueau could rarely obtain in these investigations the level of evidence necessary to permit a full investigation, even when such evidence was relatively abundant (though concealed from discovery by the ineffective techniques permitted).

On top of this, they imposed completely unrealistic time limits. A limited investigation had to be terminated within 90 days unless headquarters permission was obtained for a similar extension, based on a written justification. The impracticality of this limitation is indicated by the fact that, *if* the use of informants had been permitted at this level, it would probably take more than 90 days for the informant to get into the group after the Bureau had found an appropriate person for the mission. Moreover, given the fear such groups have of FBI penetration and their consequent caution about new members, once the informant had infiltrated the organization it would probably take many more than 90 days before he would be sufficiently trusted to be given access to the type of information he was there to obtain.

Denied the use of informants (and electronic surveillance) at this level, and thereby forced to use much less productive techniques, the FBI could obtain the intelligence necessary to justify a full investigation only on the rarest of occasions.

Appallingly enough, this same 90-day limitation applied even in full investigations which permitted the use of informants, but restricted the types of information they were allowed to gather.

The Levi guidelines compelled the FBI to halt not only its investigation of the CPUSA as a domestic security matter, but also various other groups that were openly Communist and/or revolutionary in nature. One was the Progressive Labor Party (PLP), the Maoist CP offshoot that had publicly announced its goal of violent overthrow and penetration of the armed forces as a means of assisting the achievement of its objectives.

Former FBI Director Clarence Kelley, testifying in 1976 in the $40 million lawsuit of the Socialist Workers Party (SWP) against the FBI, CIA and other intelligence services for surveilling its activities here and abroad for many years, said that, pursuant to the Levi guidelines, FBI agents had been instructed that if they were offered information about the SWP "they must refuse to accept it." [133] The SWP is affiliated with the Fourth International in Brussels, the control agency of the world's Trotskyist Communist parties, some of which have engaged in terrorism. It has a minority faction which has advocated SWP terrorism in this country. Though part of a "dissident" Communist movement, it is committed to defense of the Soviet Union. Under the Levi guidelines, however, it was immune to FBI investigation.

Under such guidelines, the FBI was even compelled to drop investigations of well-known U.S. terrorist groups—whenever, in a period of a year, the groups did not openly proclaim responsibility for a bombing or other criminal act or the Bureau was not able to attribute certain crimes to them.

Per the guidelines and supplementary restrictions the Bureau imposed on itself because of their highly restrictive tone, it stopped collecting intelligence on all ordinary members of the few groups it had under investigation, limiting its efforts to group leaders and policy makers (how nice for the rank-and-file bomb-maker, but how unfortunate for his victims); and stopped reading all revolutionary literature for clues to the size, aims, capabilities, etc., of such organizations, unless they were under formal investigation.

Considering the limitations in the executive orders, guidelines and regulations that have governed the activities of the CIA, FBI and all other agencies in the Intelligence Community during the past eight years, it is clear that vast amounts of intelligence that should have been collected during this period were not collected and that, in one way or another, all that lost intelligence will adversely affect the national security for years to come. The field of counterintelligence is one of those crucial areas in which the loss will be felt most keenly.

The Foreign Intelligence Surveillance Act (FISA)

Electronic surveillance, which includes wiretapping, bugging and a number of other surveillance techniques, is one of the most widely used and effective counterintelligence (and intelligence) weapons. While the Supreme Court has not yet ruled directly on the issue, at least four different Federal circuit courts of appeal, in reviewing about half a dozen espionage convictions, have upheld a power claimed by every President since FDR—namely, that the Constitution itself confers on the President the power to order electronic surveillance for foreign intelligence (as distinguished from criminal investigative) purposes. He need not obtain a court order (warrant), though this is considered an intrusive investigative technique. In at least two of these cases, the Supreme Court has refused to consider appeals from the circuit court holdings. In these decisions, the term "foreign intelligence" has included counterintelligence.

Despite this fact, an unsettling development took place in 1976. President Ford decided to surrender to the legislative and judicial branches this Constitutionally conferred power of the Executive to protect the national security as he saw fit. He sent to Congress a bill, the Foreign Intelligence Surveillance Act (FISA) which would prescribe (limit) when and under what circumstances presidents would be able to exercise this power to counter hostile foreign agents operating on American soil. After Congress had worked its will on those conditions, a special federal court (FISC—the Foreign Intelligence Surveillance Court) would sit in judgment on whether, in specific cases, a president had met the standards set by Congress. If it found in the affirmative, it would issue a warrant permitting him to wiretap the known or suspected spy.

The bill easily passed the House, but was blocked in the Senate. A handful of ultra-liberals there objected that the President's proposal did not go far enough in restricting Presidential authority in the area and therefore killed the bill.

In 1977, President Carter submitted a new FISA to Congress which, to please the critics, went farther in restricting the power of presidents to use electronic surveillance, one of the most effective of all counterintelligence instruments, as they saw fit.

The Carter FISA easily passed both Houses and became law in October 1978, though, for a number of technical reasons, it did not become fully operative until August 16, 1979.

The U.S. is the only nation in the world that so restricts the use of a basic national security instrument. Though even some conservative "hard-liners" have praised the law, it is extremely ill-advised and has already damaged this country's counterintelligence capabilities.

To illustrate: Though a FISA warrant can permit electronic surveillance of certain types of foreign powers for up to a year before the President must go hat-in-hand back to the FISA court to request an extension (supplying a complete new justification for it), a warrant for the surveillance of other foreign powers or their agents and any U.S. person is *limited to 90 days.*[134]

Its meaning, particularly in reference to the previously noted "American connection," was spelled out in 1977 in an analysis by the Society of Former Special Agents of the FBI of a legislative proposal which contained an even stricter surveillance time limitation. The Society said:

> These limitations were drafted with no practical understanding of the enemy we face.... One of the weakest links in an espionage apparatus is the personal face to face meeting. Given this, hostile intelligence services schedule such meetings *several years apart.* The filling and clearing of dead drops—placing the fruits and tools of an espionage agent expertly concealed in a secret and unobtrusive location—*are scheduled months apart.* Even radio schedules—the directions for an enemy agent to listen, the times and frequencies—are arranged *over periods extending well beyond a year.* How then is the FBI going to catch spies in thirty [or 90 (author)] days?.... The FBI could never hope to discover the most elusive and dangerous of all enemy agents commonly referred to as 'the illegal.'... (Emphasis added.) [135]

Publicly known facts about numerous espionage cases attest to the accuracy of the Society statement, which was based on the knowledge of members who had spent many years in counterintelligence. Telephone and other contacts subject to electronic interception, of course, are equally time-distanced.

The Association of Former Intelligence Officers (AFIO), whose members represent literally thousands of years' experience in all U.S. intelligence services, opposed the warrant and other provisions in the bill. It would be a "disservice to the country," AFIO said, to restrict the President's power to collect "one of the most sensitive" types of intelligence.[136]

Such voices went unheeded, but before long some of those who had spoken and voted for the FISA—and even the administration which pushed it through Congress—found problems with their handiwork.

Five members of the House Intelligence Committee who dissented from its report on the proposed (and defeated) Intelligence Oversight Act of 1980 cited that bill's failure to correct deficiencies in the FISA as one reason for their refusal to support it, saying:

> The Administration...has now found the [FISA] law too restrictive. In other words, needed intelligence is being lost. The Administration has asked for changes so that this intelligence can be collected. Yet, on this pressing matter the Committee bill is silent.[137]

The five committee members were referring to the fact that earlier in 1980, when the

FISA had been in operation for less than a year, the Carter administration had asked both the House and Senate intelligence committees to introduce bills to correct the following deficiencies in the law:

—It barred surveillance of dual nationals, specifically of American citizens who held senior positions in foreign governments or military forces. Changes were therefore needed "to ensure that necessary and lawful surveillance would not be frustrated."

—It did not authorize physical entry of foreign government premises to install, repair, or remove electronic surveillance equipment which, in a "very limited number of cases" and for limited purposes, could be used without a FISA court warrant.

—It required that when a warrantless surveillance was initiated in an emergency situation, a FISA court judge had to be notified and petitioned for a warrant within 24 hours. The paperwork required for a warrant was so extensive and complicated that the requirement often could not be met (Federal law governing emergency tapping *in criminal cases* permits surveillance for *72 hours* before a warrant must be obtained).

The FISA requires that for each of the first five years the law is in effect, the two intelligence committees, based on information provided them by the Attorney General, publish annual reports on its implementation. The 1980 reports of the committees, in addition to noting the administration's request for amendments of the law, revealed another interesting fact: going beyond the authority of the law, the Carter administration had asked the FISA court to issue warrants for unconsented physical searches ("black bag jobs"), and the court had complied with its request in several cases, based on a legal memorandum by Kenneth C. Bass, the Counsel for Intelligence Policy and Review.[138]

Both committees expressed concern about this. The same five House committee members accused the court of exceeding its authority, noting that its own legal officer, opposing Bass, had written an opinion stating that it could not legitimately issue such warrants. They revealed that

> we were informed soon after FISA took effect that most of the activities which were intended to be exempted from judicial review in fact were being reviewed by the Foreign Intelligence Surveillance Court. Again, unexpected results came from an Act which had been so 'carefully considered.' [139]

They and the court legal officer were vindicated on June 11, 1981, when Senior U.S. District Court Judge George L. Hart, Jr., presiding judge of the FISC during its first three years who had issued one of the black bag warrants, wrote an opinion (in response to a Reagan administration request) in which he stated, "I have no authority to issue such an order. I am authorized to state that the other designated judges of the FISC concur in this judgment." [140]

Later, in June 1983, Judge Hart told a House committee that he had issued the warrant in "an emergency situation" that gave him very little time for thought and that later "I decided I was completely wrong." [141]

CIA Director William J. Casey, in April 1981, urged enactment of the same three FISA amendments the Carter administration had requested, stating that the dual nationality amendment "is *necessary* to avoid the *repetition* of situations which have resulted in the *loss* of significant foreign intelligence information." (Emphasis added.) [142]

Casey also asked for an additional amendment to close another gap in the law, an amendment that would permit the retention and dissemination of information indicating "a threat of death or serious bodily harm" when such information was unintentionally

acquired by an intelligence agency in the testing or training use of electronic surveillance equipment. (FISA "generously" permits such use of equipment, but flatly forbids the retention or dissemination of *any* information of *any kind* acquired in such exercises, even if it should concern a vital security matter.)

"FISA should not be a legal impediment to the use of that information," Casey said, noting that under its provisions "the technician or trainee would have to violate Federal law if he were to use this information in an attempt to save a life." He added that

> it is unconscionable for the government to continue to make a crime of such a life-saving use of information, and it would be more unconscionable if the government were to ignore the opportunity to prevent a crime of violence because the threat was contained in a [FISA] protected communication.[143]

To this day, however, neither committee has made a move to implement the above or any other requested amendment, despite the fact that the five previously mentioned House Intelligence Committee members, in their "additional views" incorporated in the committee's 1980 report on FISA's implementation, pointed out that

> it took less than nine months after the warrant procedure took effect for the Administration to find its hands tied by this new law. Crucial—and legitimate—foreign intelligence information could not be collected because of overly-restrictive targeting standards. Indeed, one example was a senior official of an unfriendly foreign power who could not be targeted.[144]

The 1981 reports of both intelligence committees noted that the physical entry amendment might not be needed because Richard K. Willard, Counsel for Intelligence Policy in the Reagan administration, in a partly classified memorandum reversing the earlier position of Kenneth C. Bass, had found that FISA implicitly authorized such entry.

Despite the above facts about FISA's deficiencies, the 1980 reports of both committees noted that both NSA Director Admiral B. R. Inman and FBI Director William Webster supported the law. Inman said it had given NSA "some benefits" and "works well." Webster, repeating Inman's "works well," had added "we are operating under it, in all candor, better than we were operating without it. . . [it] has not had a deleterious effect on our counterintelligence effort" and "has been valuable" to the FBI in espionage, foreign counterintelligence and international terrorism investigations.[145]

Moreover, the House Intelligence Committee took the position that FISA "has benefited our nation's intelligence collection activities." [146]

In 1982, however, the Attorney General and FBI told the Senate Intelligence Committee that there was a "possible need" (the committee's words) for administrative relief from the 90-day limit in FISA warrants for the surveillance of officers of hostile foreign intelligence services.

The very idea of a great power counterintelligence service having to run back to a court every three months to get permission to continue electronic surveillance of hostile foreign agents is ridiculous on its face, even if extensive, largely useless paperwork were not involved in each extension. "Administrative relief"? What is needed is total relief.

FISA's Criminal Standard

It is surprising that the U.S. government, even through easily alterable guidelines, would hobble its principal counterintelligence agency's ability to cope with Soviet active measures in this country by imposing a criminal standard on its intelligence-gathering activity. It is almost unbelievable—but all too true—that it has gone much farther by also placing the same crippling limitation not only on the FBI's *counterespionage* efforts but additionally on the operations of NSA and all other agencies which must utilize electronic surveillance within the U.S. to carry out their intelligence-security duties. The government's action is particularly difficult to understand because it has been effected by means of a federal statute, which, at best, is usually difficult to amend.

Yet a recent overlord of U.S. counterintelligence, Griffin H. Bell—on the very day the Senate voted its approval of FISA—emphasized that that is just what the government was about to do. Testifying before one of its committees, he said,

> In the Surveillance Act, we are now encompassed in a criminal standard, that is, there are shades or variations in the standard, but it is still a criminal standard. I guess in that sense we are getting ready to say that everything is going to be on a criminal standard.[147]

What in FISA prompted Bell to make this statement?

FISA stipulates that no FISC judge may issue a warrant for electronic surveillance unless, among other conditions, facts submitted by the Attorney General give him "probable cause" to believe the target is a foreign power or the agent of a foreign power, as those terms are defined in the act. The former is relatively easy to do; the latter is not, particularly when the agent is a "U.S. person." In such cases, the facts must show that the person is "knowingly" engaged in clandestine intelligence that does or may involve *a criminal act* on behalf of a foreign power, or that he is "knowingly" engaged in such activity "pursuant to the direction of" a foreign intelligence service or network.[148]

Webster's dictionary defines "probable cause," *in law*, as "reasonable grounds for *presuming guilt* in someone charged with a crime" (emphasis added).

That is a tremendous amount of evidence to demand of a counterintelligence agency before it can even begin to consider tapping or bugging a spy. Evidence sufficient to form a basis for presuming guilt is little different from that sufficient to convict. FISA creates a Catch-22 situation for the FBI, defeating the basic purpose of electronic surveillance as a counterintelligence weapon—which among other things is *to obtain the information that will establish probable cause.* That is the way it is used by other nations and was used by the U.S. prior to 1978. Now the cart comes before the horse.

FISA goes even farther in subverting the effectiveness of electronic surveillance. It provides that no "U.S. person" can be considered a foreign agent "solely upon the basis of activities protected by the first amendment to the Constitution." [149]

The first amendment protects speech, writing and association, among other things. Thus, no matter what any U.S. person, citizen or not, says or writes lawfully and no matter with whom he or she associates, such activity alone cannot serve as a basis for electronic surveillance. A person could be an open, blatant propagandist for the USSR or some other hostile foreign power and routinely associate with known espionage agents of that power,

but until the FBI has collected evidence of criminality in those activities, that person cannot be considered a foreign agent. (David Truong, now serving a long prison term for espionage, operated originally as an "agent of influence" for North Vietnam and the Vietcong, avidly promoting their cause in Vietnam War protest groups and among the staffs of members of the House and Senate before—so far as is now known—"graduating" to actual spying for them. If he were still free and operating today, FISA would bar electronic surveillance of his activities until clear evidence of crime was found in them.)

Another senseless barrier: Foreign powers must be surveilled continuously for long periods of time if the full extent of their anti-American (espionage or active measures) operations is to be uncovered, so that countermeasures can be taken. FISA in its definition of foreign powers includes not only embassies, chanceries, consulates and all other diplomatic or commercial entities openly controlled by a foreign government, but also those (business firms, etc.) secretly controlled and used as covers for espionage, and international terrorist organizations. Yet, while permitting one-year extensions for surveillances of most of the openly controlled entities, FISA forbids extensions of such length for those secretly controlled and also for the terrorist groups unless the FISC judge has probable cause to believe that "no communication of any individual United States person will be acquired" during the extension period.[150]

All terrorist groups need a local support apparatus, composed of a considerable number of people performing a variety of functions—and there must, of course, be communication between them. The possibility that either a foreign-based international terrorist group operating in the U.S., or a U.S.-based one functioning here, would not receive any communication at all from any U.S. person in the course of a full year's surveillance is therefore exceedingly slim, virtually non-existent. What chance does the FBI or NSA, the two principal users of FISC, have to convince any intelligent, honest judge that the opposite is true? FISA therefore bars anything resembling an adequate single extension of surveillances of those who pose a serious danger to the lives and property of American citizens.

One of the major reasons for a business or other cover for espionage is to permit foreign spies to "escape" from their embassies and consulates which are known as spy centers and therefore normally under continuing electronic and other surveillance. It provides them with a safer haven for their operations—but does not free them of the need to communicate with those above and those below them. The very fact that these entities are concealed makes them more dangerous and the need to uncover them greater. In its extension provisions, however, FISA makes it more difficult to collect intelligence on such establishments than on the others.

Does this make sense?

What Need For FISA?

During the '50s, '60s and early '70s, opponents of effective U.S. security in Congress and the media played a clamorous numbers game in regard to the issue of warrantless security wiretaps. They demanded to know just how many had been used each year and

made extreme claims about overuse that threatened the Constitutional rights of Americans. Administrations gradually acceded to their demands, making precise figures public. Statistics published by the Church Committee reveal the following figures on the past use of wiretaps for both security *and criminal* purposes:

1945- —the all-time high year	519
1945-1950—5 immediate post-World War II years (average per year)	428
1950-1954—average per year	292
1955-1959—average per year	167
1964-1968—average per year	172
1969-1974—the 5 years immediately preceding the first FISA proposal (intelligence only)	108 [151]

Later, Attorney General Edward Levi repeatedly boasted that from July 1975 till the end of his term in office (pre-FISA) not a single U.S. citzen had been subjected to warrantless electronic surveillance.

What happened in that period? Did Moscow call off all its espionage operations involving U.S. citzens? Or did the administration simply decide that it would cease using one of its best means of gathering intelligence about such operations?

Levi's successor, Griffin Bell, stated with equally silly pride in 1978 that throughout his term as attorney general only one citizen in the entire United States had been the target of electronic surveillance and that that case had been undertaken on the direct order of President Carter. Again, the same questions must be asked.

What has happened under the highly restrictive FISA? Through the year 1982, FISC had approved 1,422 applications for foreign intelligence use of electronic surveillance, an *average of 406 per year* for the three and a half years it had been operative. Moreover, it had not turned down a single request for such surveillance.[152] The 406 is about the same as the FBI used in 1948 (416) for *both criminal and intelligence* (both domestic security and foreign espionage) purposes and an average far greater than that of any year since 1949.

Under FISA, in other words, the U.S. is tapping and bugging for security reasons at a rate *five times greater* than it was, for example, in the year 1968 when the FBI—if you believe the media and some Congressional committees—was engaging in gross violations of citizen privacy by utilizing *82* bugs and taps.

One meaning of these now publicly available figures was spelled out in 1975 by Associate FBI Director James Adams in testimony explaining why, in the face of Congressional demands for such information, the FBI had been reluctant to reveal exact figures on its use of various techniques:

> We are actually compromising our effectiveness by disclosing all of this.... [W]e have had some real bull sessions over it, like on releasing the number of wiretaps [which had been done in all recent appropriation hearings—author] — that we have been beat to death with the false allegation that we have thousands of wiretaps, and so we sat there wondering, do we do more damage to the United States by revealing the few we have — which was, I think, about 80 at the time — and letting hostile intelligence services know how inadequate our operations are against them? Or are they going to believe us, anyway, when we release it? And maybe the American public will believe us. And maybe hostile foreign services will think this is just a disinformation program like they engage in.
>
> So we finally considered that the beating we were taking over all these false statements about the extent of wiretapping, was such that we had to go ahead and go public, because

there isn't a country in the free world, or on the other side of the curtain, that has this little electronic activity against foreign operations in their country.[153]

What it all boiled down to, Adams continued, is the question of "whether the United States can afford, in the areas of foreign intelligence, to be so 'Simon-pure' that we are willing to let foreign espionage agents operate almost at will in the United States. . . and be granted almost the same type of sanctity that an American citizen should have." [154]

Another meaning of the above statistics is that former FBI Director Hoover, rather than being overzealous in this area—as the media and some in Congress painted him—for years *did not do as much as he should have done* in the electronic surveillance field, at least when reasonable attorneys general were in office.

(It is known, for example, that Attorney General Ramsey Clark rejected a number of Hoover foreign intelligence-counterintelligence wiretap requests, despite the great caution with which they were obviously being utilized.)

"Silly" was the word a top Justice Department official used at a meeting of the Federal Bar Association in 1976 to describe the complicated procedure, based solely on administration regulations, the FBI had to go through to obtain approval for warrantless national security wiretaps at that time. An incident that occurred two years later (pre-FISA) demonstrated what he meant.

Two terrorists invaded the Chilean consulate in San Juan, Puerto Rico, on the eve of July 4, 1978. They seized two hostages, the Chilean consul and a Puerto Rican in the consulate on business. They demanded cancellation of the July 4 parade in San Juan and freedom for the four radical Puerto Rican nationalists imprisoned in this country since their separate convictions for attempting to assassinate President Truman in 1950 and wounding five members of the Congress when they shot up the House of Representatives in 1954.

After a 17-hour siege, officials in San Juan—including two FBI agents specifically trained in hostage negotiations and two lawyers requested by the terrorists—finally talked them into releasing the hostages unharmed and surrendering.

During the siege, the FBI agents wanted to tap the consulate telephone in the hope of learning whether the terrorists had outside accomplices or were acting alone, and to obtain any other information that would help them resolve the crisis without loss of life or serious injury to the hostages or anyone else.

It took the FBI only 15 minutes to get approval for the tap from the Chilean government—but *seven hours and 45 pages of legal paper work* to clear it through the U.S. government.

The two hostages could easily have been killed in that time and, in some other incident with a larger number of hostages, many more than two might have been killed or injured.

Given that the great need alleged for the enactment of FISA was the supposed irresponsible and excessive wiretapping by the FBI, what does this incident say about the necessity for this 15½-page law packed with limitations and restrictions on the Bureau's ability to utilize electronic surveillance for foreign counterintelligence purposes?

But doesn't the increased use of electronic surveillance under FISA mean that, despite its demonstrated shortcomings, the law is beneficial?

No, for several reasons, in addition to those already enumerated (criminal standard, etc.):

—FISA compels publication of the very statistical danger that worried experienced FBI counterintelligence agents years ago. It forces the Attorney General to report annually

to Congress and to the Administrative Office of the U.S. Courts the total number of applications made for FISC warrants and extension of warrants, and also the exact numbers of orders and extensions granted, modified or denied by the FISC. This is public information.

—Additionally, its provisions give hostile foreign powers detailed information about what uses can and cannot be made of electronic surveillance, types of people and establishments that can be targeted, time and other limitations on various targets, etc.—information useful to them in countering U.S. counterintelligence efforts.

—It requires that applications for FISC orders contain greatly detailed and highly sensitive counterintelligence information: identity of targets and information needed; what other techniques have been used without success to obtain the needed information; the evidence that the target is a foreign agent; the means by which the surveillance will be effected; why it is believed the desired information can be obtained by this technique; how long it will take, etc.

Possession of such information makes the FISC a major target of hostile foreign powers. Because no courtroom secure enough to protect such information could be found in all of the United States, the FISC meets in a specially protected room in the Department of Justice, where all its information is also kept under special security. This, along with the Attorney General's new role in intelligence and the fact that the Counsel for Intelligence Policy and Review and his staff are housed in the Department, has made it, as well as the FISC, a special target of KGB and similar penetration efforts.

—The law is probably unconstitutional—and therefore objectionable in its very essence. No law can—or should try to—override the Constitution, the supreme law of this country. FISA does just that because it usurps a power conferred on the president (and no one else) by the Constitution and turns it over to a unit of the *Judicial* branch to exercise it as the *Legislative* branch has decided it should be utilized. Actually, any president who wants to can defy the FISA at will. Should anyone be so rash as to institute legal proceedings against him for doing so, he can simply take the case to the Supreme Court. The odds are overwhelming that it will uphold his action, finding the law unconstitutional.

Even President Carter, while using the FISA he himself had promoted to avoid personal responsibility for the exercise of national security power, insisted that he had a constitutional right to direct the use not only of electronic surveillance but of other highly intrusive techniques to collect foreign intelligence without a warrant and outside the provisions of FISA.

The very existence of the FISA is an indication of the extent to which U.S. national security has been politicized and cheapened. It should be constitutionalized once more. Past presidents had the courage to take the heat for properly exercising their Constitutional duties.

All that is necessary to end the dangers the FISA poses to effective U.S. counterintelligence is a president with the courage to defy a law that is basically a sham.

Senator Malcolm Wallop, in the Senate Intelligence Committee's 1982 report on the implementation of the FISA, revealed that the committee had never even met to consider how FISA was working and its impact on U.S. counterintelligence. In his view, its net effect has been to "confuse intelligence gathering with criminal law" and to enmesh it in proceedings "wholly inappropriate to it."

Tremendous Informant Loss

Every attorney general and FBI director who has ever testified on the subject of informants has stressed the vital role they play in both law enforcement and security matters. Numerous intelligence experts have similarly emphasized their tremendous importance to both intelligence and counterintelligence. A 1977 report of the General Accounting Office (GAO) on the FBI's use of informants stated the obvious when it said they were "important" in criminal investigations but "essential" to intelligence operations.[155]

The unique, very special value of informants is keyed to the fact that the greater the assault on society (whether security or criminal) a group undertakes, the more it becomes secretive and conspiratorial. Intelligence about conspiracies or evidence to convict conspirators can normally be obtained *only from someone on the inside* who is privy to the group's clandestine objectives, techniques, members and plans—i.e., a conspirator who breaks with the conspiracy, or a person who, at the request of intelligence or law enforcement authorities, penetrates the group by pretending to be a sympathizer. One of the most respected American jurists, the late Judge Learned Hand of the Court of Appeals for the Second circuit, wrote in upholding the constitutionality of the conspiracy clause of the Smith Act,

> Courts have countenanced the use of informers from time immemorial; in cases of conspiracy, or in other cases when the crime consists of preparing for another crime, it is usually necessary to rely upon informers or accomplices because the criminals will almost certainly proceed covertly.[156]

Rejecting the more recent claim of a group of radicals that use of informers by the New York City police department intelligence unit violated their constitutional rights, federal judge Edward Weinfield found the practice "legitimate and proper," as well as "justified in the public interest," and added that,

> indeed, without the use of such agents, many crimes would go unpunished and wrongdoers escape prosecution. It is a technique that has frequently been used to prevent serious crimes of a cataclysmic nature. The use of informers and infiltrators...does not give rise to any claim of violation of constitutional rights.[157]

Informants have repeatedly demonstrated their value. Much if not most of American knowledge of the KGB, of the CPUSA or its fronts and their operations have come from them. They have provided much of the knowledge on which this country has based its security measures and counterintelligence operations.

"The House on 92nd Street," a popular film of some 25 years ago, told the story of how an informant rendered ineffective one of the largest Nazi espionage rings dispatched to the U.S. during World War II. A young member of the ring broke with it and went to the FBI with information that led to the sentencing of 33 Nazi espionage agents to a total of more than 300 years in prison.

The late Hollywood musical director, Boris Morros, served as an FBI counterspy from 1947 to 1957. The 68 trips he made to Moscow and other European cities in that period,

plus his work in this country, broke a Soviet spy ring here and also identified for the FBI a number of Soviet espionage officials in the U.S. and abroad.

Penetrating the Black Liberation Front as an informant for the New York City police, Sgt. Raymond Wood foiled the group's plot in 1965 to blow up the Statue of Liberty, the Liberty Bell and the Washington Monument.

Information about Soviet missiles that Col. Oleg Penkovsky gave the CIA helped President Kennedy resolve the 1962 Cuban missile crisis without war.

The convictions of many Communist Party leaders under the Smith Act were based overwhelmingly on the testimony of FBI informants. The same was true of the findings of the Subversive Activities Control Board (SACB) and the hearings and reports of Congressional investigating committees over a period of many years. Many of these concerned espionage, as well as Soviet and other Communist subversion.

Protecting the identity of informants is essential.

Alex Rackley, a Black Panther, was tortured and murdered because he was suspected of being a government informant. Other Black Panthers were killed for the same reason. In August 1977, Marge E. Compton and her six-year-old twin daughters were murdered after Hell's Angels placed a $10,000 bounty on her head because she had informed by testifying in a trial which ended in the conviction of several of its members on vice charges.

Nikolai F. Artamanov, a Soviet Navy Captain, surfaced as a Soviet defector at a 1960 hearing of the House Committee on UnAmerican Activities and later began work as a consultant to the Defense Intelligence Agency. In 1965, he became a U.S. citizen and changed his name to Nicholas G. Shadrin. Approached by the KGB to doublecross his adopted country the following year, he went to the FBI and agreed to serve as a double agent ("informer"). He was last seen by his wife on December 20, 1975, in Vienna, where he had gone on a counterintelligence mission, just before he left to meet two KGB agents. He is presumed dead—at the hands of the KGB.

Secretary of State John Foster Dulles dropped ("lost") a passport denial case rather than risk the life of Boris Morros who was on his last mission to Europe at the time. Had Dulles acceded to a court's demand that he produce evidence justifying denial of a passport to Jane Foster Zlatovski (a member of the Morros ring, suing for return of her previously denied passport), Morros would probably never have left Europe alive. (Zlatovski got her passport, escaped to France and is still a fugitive from an espionage indictment.)

FBI Director William Webster has refused to give the GAO access to the FBI's informant files. He has taken the same position with the Department of Justice, although the Bureau is technically subservient to the Department.

Attorney General Griffin Bell in 1978 flatly refused the demand of a federal court judge in New York that he turn over FBI files on almost a score of Bureau informants who had served in the SWP. Result: He became the first Attorney General in the history of the United States to be cited for contempt of court (a higher court subsequently resolved the issue in Bell's favor).

Recent Developments

Attorney General Edward Levi's guidelines on the FBI's use of informants in domestic security, crime and organized crime investigations, effective December 15, 1976, were made public on January 5, 1977. They were fundamentally anti-counterintelligence, pro-subversion (Soviet active measures) and pro-crime. Leaders and attorneys of the CPUSA and lawyers for organized crime syndicates must have been overjoyed as they read them.

A basic rule of informant use is that informants must live and act as do the members of the group they have penetrated. The 1970 report of the President's Commission on Campus Unrest emphasized that

> the continued effectiveness of an informer or undercover agent may well depend on his willingness to participate in unlawful activity.[158]

But the Levi guidelines rejected this universally recognized truth. They ruled that Bureau informants "shall not... participate in acts of violence" [which are normally unlawful] *under any circumstances* and, further, that they could not "participate in criminal activities" [of any kind, violent or non-violent] unless the FBI was first contacted on the matter and made a determination that their participation in the crime was "necessary" to obtain information for *federal prosecution*.[159]

The guidelines thus set up every one of the FBI's informants for exposure. Knowing the rules the informants had to obey, subversive and criminal elements could easily plan suddenly-staged criminal or violent acts in which every informant would be compelled to reveal his role by refusing to participate.

To ensure that this result would follow, the guidelines directed that every time an FBI agent learned of an intended violent crime, he had to instruct the informant "to discourage the violence" — one more noose around an informant's neck.[160]

They even went farther, providing penalties for any informant who broke these rules. "Under no circumstances," they continued, would the FBI ever take any action to conceal from law enforcement authorities an informant's participation in a crime. Normal FBI procedure would be to immediately report the informant to police. In some "exceptional cases" it would instead report the crime to the Department of Justice. After considering the FBI's recommendation in the matter, the Department would decide *when* police would be notified and whether the informant should be retained.

At the time the guidelines were published, this writer predicted that organized crime and Communist, terrorist and revolutionary groups, using them as a guide, would begin testing for informants within their ranks and that "it is only a question of time" before the "virtual destruction" of the Bureau's informant system would take place.[161]

About a year later, FBI Director Webster testified that the FBI was using its own special agents for undercover work in organized crime. He commented,

> It's tough and difficult. There is constant testing going on within organized crime of members, their loyalty, testing people by means of requiring them to engage in illegal activity.[162]

One FBI agent had been killed. Webster said nothing about the security field, but statistics soon revealed what was happening in that sphere.

Importantly, the guidelines did not contain the words "counterintelligence" or "intelligence." From the security/counterintelligence viewpoint, therefore, the Bureau's ability to use informants was determined by the earlier published domestic security investigations guidelines which, as already noted, were based on a criminal standard. FBI "straight" intelligence/counterintelligence use of informants was thus barred, except insofar as the *foreign* counterintelligence guidelines permitted their use.

What effect did the guidelines have on the FBI's counterintelligence capability? The Church Committee reported that the FBI had 1,731 regular informants in the domestic security field in 1971, and in June 1975, 1,040, plus 554 in a probationary status, pending determination of their reliability—a total of more than 1,500.[163]

In the spring of 1978, after the Levi guidelines had been in effect a little over a year, Associate FBI Director James Adams testified, "I have difficulty with the small number of informants we presently have in domestic security. It is less than 100 in a nation of 200 million people." [164]

There had been a decline of more than 1,400 informants in a few years.

A short while later, in May, Director Webster made the startling revelation that the FBI had only 42 informants in the entire nation in the field of domestic security.[165] The following year, he was so embarrassed by the facts that when asked for exact figures by a member of the House Appropriations Committee he said, "If I may, I am going to avoid the ones that have dropped so low that I don't want to talk about them"—and escaped giving the number.[166]

In his 1980 testimony he admitted the total was "a very small number," and said the FBI was making "every effort" to increase it, but finally admitted it "is less than 25.... It is too small." [167]

A short while later, in another hearing, an FBI assistant director revealed that the actual number was *only 17*, a "tremendous diminution," as he said, of what it had been years before. He made another revelation. "In concert with our guidelines," he added, the FBI had taken "self-imposed restrictions to ensure the quality" of its informants.[168]

No intelligent person questions the fact that quality informants are essential to the FBI and other investigative agencies. But why would the Bureau, faced with devastating informant losses, take additional steps that would increase its problems in recruiting and retaining informants? Given the fact that the FBI's past record on informant quality has been excellent, one must conclude that— unless there is something basically wrong in the FBI—the Levi informant guidelines compelled it to do so.

Why? I believe only a madman, or an extremely rash, reckless and irresponsible person (i.e., an undesirable) would serve as an informant under the conditions specified in the guidelines. Added constraints were therefore necessary if the Bureau was to hope for any reliability in its informant system.

Another important factor in the informant decline is the Freedom of Information Act (FOIA).

Officials of both the CIA and FBI have been testifying for years about the difficulties the FOIA poses to the recruitment of sources of all types in the intelligence field—not only informants as such, but police, government officials here and abroad, intelligence agencies, businessmen, academics, etc. In all areas, those who have cooperated with U.S. intelligence agencies in the past have either reduced cooperation or stopped it entirely

because they fear exposure of their roles through the FOIA.

CIA Director William Casey testified in 1981 that 15 friendly foreign intelligence services had by then refused full cooperation with the CIA because of the FOIA, believing it threatens the security of their information and sources. The same is true, he said, of individual agents abroad. The CIA's agent network, he said, is "in jeopardy" and offered to give "many examples" to demonstrate his contention in a secret session of the Senate Intelligence Committee.

In 1982 testimony, FBI Director Webster cited instance after instance in which the Bureau had lost security or criminal informants for the same reason. One was a U.S. citizen who had a chance to penetrate a hostile foreign intelligence establishment and was generally willing to do so—but eventually declined because of the FOIA.

When friendly foreign services and individuals won't cooperate with the CIA in providing positive intelligence, what chance does it have of recruiting double agents in hostile agencies when the risk in such work is so much greater? The same applies to the FBI when it is known that its *domestic* program is a shambles.

Attorney General Benjamin Civiletti promulgated new informant guidelines for the FBI in December 1980. They were not quite as bad as their predecessors.

The flat ban on their participation in *all* criminal activity under any circumstances was rescinded. Before participation in such activity was permissible, however, an FBI official had to make a written finding that it was "pertinent" (rather than "necessary") to the Bureau's responsibilities. The evil inherent in the fact that the informant had to have advance knowledge of any planned criminal act and get permission to take part in it—or risk being readily exposed —thus remained. (In domestic security cases, an FBI Headquarters official had to make the written finding.)

Moreover, the ban on all violent activity was retained. All informants were to be instructed that they "shall under no circumstances participate in any act of violence." [169] An informant's obligation to try to discourage violence was eased by addition of the words "to the extent practicable."

In no significant way, however, did the new guidelines alter the Levi rules that had wrecked the FBI's mid-'70s informant system which had been built up by years of careful, difficult effort. Again, they made no reference to the use of informants for straight intelligence or counterintelligence purposes and thus went far toward protecting Soviet active measures from surveillance by the U.S. government.

The Civiletti guidelines are still in effect in the Reagan Administration. U.S. counterintelligence is still hobbled in this vital field by unwarranted demands that endanger lives as well as the national security — and which deny it anything like effective utilization of the most effective of all intelligence weapons.

Huge Domestic Intelligence Loss

Because of the normal "American connection" in Soviet active measures and other foreign-directed or influenced subversion carried out in this country, the amount of domestic intelligence collected obviously has high impact on the effectiveness of U.S. counterintelligence. The FBI has been the principal governmental domestic intelligence collector.

The Bureau was highly proficient in this area years ago. In the 1940s, its coverage of the Communist Party, as an example, was so thorough that it annually released the exact number of party members in the country, breaking the total down on a state-by-state basis. Though this practice was dropped in the early 1950s, comprehensive coverage was continued, as the Smith Act prosecutions of that decade revealed. Bureau testimony and reports also indicated that it was continued through the '60s and into the '70s when, as a result of the Pike and Church committee hearings and the 1976 Levi guidelines, it began to fall off precipitously. In fact, it stopped altogether.

FBI Director Clarence Kelley in 1977 told a congressional committee: "We do not conduct investigations purely for the need of gathering intelligence," adding that the Bureau had stopped doing so about a year before.[170]

Attorney General Griffin Bell wrote to a Congressman in 1978: "The FBI...does not engage in intelligence activities." [171]

That same year, Director Webster said in a speech: "We're practically out of the domestic security field." In a press conference the following year, he referred to the Bureau's past domestic intelligence collection and stated, "That program has been scrapped." [172]

Statistics on FBI domestic security investigative activity bear out the above statements. In mid-1973, the Bureau had *21,414* domestic security matters pending before it. Since that time, according to the testimony of Webster and other FBI officials, the number has declined as follows:

Year	*Cases*
1975	9,814
1976	4,868
1977 (June)	642
1977 (December)	119
1978 (February)	102
1978 (December)	52
1979 (January)	75
1979 (February)	53
1979 (July)	47
1980	54
1981	57
1982	43
1983	51

The impact of the criminal standard set in the Levi guidelines in 1976 is obvious in the

figures for the years after 1976. In the years following their promulgation, the breakdown of group and individual cases has been somewhat as follows:

	Organizations	*Individuals*
1976	78	548
1977 (April)	25	170
1977 (October)	17	130
1978 (March)	18	84
1978 (August)	12	39
1979	21	32
1980	22	32
1981	10	47
1982	23	20
1983	20	31

The above figures actually exaggerate the amount of Bureau investigation. In most cases, particularly in earlier years, the FBI was not asked whether its figures represented preliminary inquiries, limited, or full investigations as classified in the Levi guidelines. When breakdowns of this type were requested, they revealed, for example, that of the 23 group investigations in 1982 *only three* were full investigations, and of the 20 such investigations recorded for 1983, only nine were full investigations. Inasmuch as the limitations the guidelines prescribed for preliminary inquiries made them virtually useless and the limited investigations of little more worth, the only ones of any real value were the full investigations—and their totals have been far below the figures in the above tables.

Considering that the U.S. has a population of about 230 million people and is, according to the FBI and CIA, the primary world target of both Soviet espionage and Soviet active measures operations, the above figures are truly alarming—even when allowance is made for the fact that Americans involved in espionage and the Communist Party are investigated under the foreign counterintelligence guidelines.

A 1977 GAO report noted the FBI's "limited success" in developing advance knowledge of "planned violent activities." It was merely stating the obvious when it found a "massive decline" in the Bureau's domestic intelligence effort.[173]

And in a 1983 report of the Senate Subcommittee on Security and Terrorism the FBI's domestic intelligence gathering capacity was described as in a "deplorable condition." [174]

The Bureau's efforts, in fact, have become a joke in knowledgeable domestic intelligence circles. At a recent seminar of the International Association of Chiefs of Police, attendees laughed at its so-called "intelligence" collection. An official of the Department of Energy, which has major responsibilities concerning U.S. nuclear weapons, complained that when one of its security men approached the FBI for information, he was advised to use the *New York Times* Data Bank in an effort to obtain what he wanted.

Under such conditions, it is irrational to consider the FBI a "national security" or 'intelligence" agency. Consider the implications of the Bureau's lack of domestic intelligence on some of its major security responsibilities.

Presidential and other assassination attempts

The Executive orders of Presidents Ford, Carter and Reagan all specified that the FBI's counterintelligence duties include the prevention of assassinations.

The Secret Service, which is under the Treasury Department, however, has the principal and immediate responsibility in this field. It is its duty to protect the President and Vice President and their families, as well as candidates for President, former presidents, and all visiting foreign dignitaries (of which there are many each year).

The FBI's major contribution has always been that of providing relevant intelligence to the Secret Service, which is not itself an intelligence gathering agency.

In 1977, H. Stuart Knight, then director of the Secret Service, testified that the FBI was providing the Secret Service with only about 40 percent of the intelligence it had previously supplied and that there had also been a marked decline in the quality of the information provided. The overall resultant loss of useful intelligence, he said, was roughly 75 percent.[175] In later congressional appearances, Knight repeated his complaint that the decline in FBI-supplied intelligence threatened the ability of the Secret Service to carry out its mission. Asked in a 1981 hearing what he would do if given twice his normal appropriation, he replied that he would "try to enhance our intelligence capability." [176]

The assassinations of President John F. Kennedy, of Presidential candidate Robert F. Kennedy, the crippling of George Wallace, another candidate, the attempts on the life of President Ford and the serious wounding of President Reagan, all emphasize the very real and increased danger of assassinations of high public officials—and also stress heavily the great importance of effective FBI domestic intelligence collection and the danger presented by its intelligence collection failures.

The official Treasury Department report on the attempted assassination of President Reagan stated,

> The Secret Services protective capabilities have been impaired by the decline in the quantity and quality of intelligence collected by the FBI, which is the primary source of the Service's domestic intelligence.[177]

Federal Personnel Security

Background security checks of all applicants for federal employment are the responsibility of the Office of Personnel Management (OPM, formerly the Civil Service Commission). The FBI's domestic intelligence collection, however, has great impact on the effectiveness of the checks made by OPM because, of all the records searched in these checks, the FBI's files have always been the main depository of information about any person's involvement in subversive activities. To the degree that the Bureau's files are inadequate, incomplete, etc., the check loses value in protecting the government from infiltration by subversives and security risks.

Additionally, the FBI itself is responsible for background checks and investigations of its own employees and those of the Justice Department, White House appointees and employees, federal judges, FISA judges, personnel of the Nuclear Regulatory Commission and Department of Energy. It also conducts background investigations for a number of particularly sensitive congressional committees, such as those having to do with armed services and intelligence. The effectiveness of these investigations, too, is clearly dependent to a considerable degree on the thoroughness of FBI domestic intelligence collection.

Bureau intelligence collection also has great impact on military personnel security, including those with access to the nation's most sensitive defense secrets. In a 1979 hearing of the House Intelligence Committee, the security chief of the Department of Defense,

which does its own personnel security checks—including those for the DIA and NSA—was asked if the Department maintained files of its own for personnel security check purposes. He replied that it did not. Asked where the Department would go for information about someone's possible association with groups advocating violent overthrow of the government, or subversive penetration of the armed forces, he replied:

> We would go to the Federal Bureau of Investigation and inquire as to their knowledge of the organization.... Our primary source of information of this type is the Federal Bureau of Investigation.[178]

In the same hearing, an FBI official testified that the Bureau had closed the vast majority of its domestic organization cases and was not permitted even to read and file the public literature of openly revolutionary organizations. In a hearing the year before, the head of the Bureau's Terrorism ("domestic security") Section was asked if that section handled groups related to the federal personnel security program. When he replied that it did not, he was asked who in the FBI did. His reply: "*There isn't anyone at the moment.*" (Emphasis added.) [179]

Not only the lives of Presidents and other high officials and numerous visiting foreign dignitaries, but the integrity of the federal civil and military services—the protection of the government from disloyal and foreign agent penetration—is without question seriously compromised by the FBI's inadequate domestic intelligence/counterintelligence collection.

It is not necessary to go into detail about the extent to which the Bureau's ignorance of basic security information must vitiate its ability to counter terrorism, sabotage and active measures—which not only the Communist bloc, but other hostile powers, are capable of launching in this country with the help of American collaborators.

From the domestic security-intelligence viewpoint, the FBI has become the Federal Bureau of Ignorance. The U.S. today has no domestic intelligence agency. And because this is so, there is a huge hole in its national security and its counterintelligence capabilities.

As important as it is to national security, any attempt at an overall counterintelligence analysis (such as has been previously discussed) is bound to be defective in part because neither the FBI nor any other agency can provide the analysts with the kind of information they need about the "home front" aspect of the problem they are trying to deal with. They simply cannot analyze what they don't have; so they cannot make anything approaching a thorough analysis, try as they may.

Conclusion and Recommendations

The foreging is by no means a consideration of *all* the problems now confronting and, in varying degrees, frustrating effective U.S. counterintelligence. It is only a brief treatment of some of them.

There is, for example, the problem of morale. A few years ago, there was general agreement that morale was very bad throughout the Intelligence Community. Sweeping, unfair and unfounded attacks by the media, by congressional committees and many individual members of Congress were the major cause of this. Subjects mentioned in this report also contributed to it: the continuing cuts in budgets and manpower, the overly restrictive executive orders and guidelines, amateur control, etc. In addition, Congress has

been slow, or has failed completely, to deal with real dangers to this country's intelligence/counterintelligence agencies and their personnel.

Philip Agee and his crew had been publishing their *CounterSpy* and its successor, the *Covert Action Information Bulletin*, with their depradations against the CIA for about nine years before Congress finally took steps to end the threat they posed to the lives of Agency personnel and their families, as well as to the national security. Congress still has not ended the threats the Freedom of Information Act poses to the national security and the ability of all intelligence personnel to do their jobs. Both the quantity and quality of American intelligence will continue on the downgrade until Congress appropriately amends that law.

There has been some change in the political climate and the morale situation has improved, largely because of the attitude of the Reagan administration. It has been supportive, rather than hypercritical, of intelligence. The Reagan Executive Order removed a considerable number of the excessive, frustrating restrictions imposed on the Community by its predecessor and gives intelligence professionals more say about policy and procedures, depriving the Attorney General and Justice Department attorneys of powers they inappropriately exercised in the field. All this has helped.

But all is still not well in the morale field. FBI Director Webster testified in 1982,

> My problem today is not unleashing the FBI, my problem is convincing those in the FBI that they can work up to the level of our authority. Too many people have been sued, too many people have been harassed and their families and life savings tied up in litigation and the threat of prosecution. So that *we and others like us* run the risk that we will *not do our full duty* in order to protect our individual selves. (Emphasis added.) [180]

Webster repeated all but the last sentence of the above statement in another congressional appearance four months later—apparently in an effort to emphasize an important morale problem and the urgent need for Congress to do something about it.[181]

What is that problem? Since 1971, all government investigative-intelligence personnel have been liable to lawsuits, based on alleged constitutional violations, simply because of thorough and efficient performance of their duties. As a result of a concerted Communist-leftwing campaign, scores of such suits have been filed against intelligence personnel, particularly FBI agents.* Some pending suits are for millions of dollars and could bankrupt the defendants for life. Some awards of close to $100,000 have already been made (and are on appeal). During the past 10 years, every administration in power has asked Congress to correct the situation by amending the Federal Tort Claims Act so that government personnel will have the same immunity from constitutional tort claims that they have had from physical tort claims for decades. Congress, however, has failed to act.

Is it at all reasonable to believe that morale is what it should be when such conditions prevail; when the chief of the country's major counterintelligence agency states openly that he has a problem getting his personnel to perform up to the full extent of their legitimate, completely proper powers; and when the nation faces the risk that they *and others like them* are not doing their full duty?

In view of all the foregoing material, one recoils from the thought of new or additional executive orders or guidelines. Yet some changes are essential. At the very least, an adequate, comprehensive definition of counterintelligence should be developed and then

* About 10,000 have been filed against government employees in general, thus threatening the efficiency of the entire federal service.

incorporated into every executive order, guideline or regulation controlling U.S. counterintelligence activity.

The definition in the Reagan Executive Order, as noted, is superior to that in the preceding orders. Its only failure appears to be the fact that it does not allow for the reality that foreign powers may use other than intelligence personnel or agencies to carry out undermining operations ("active measures") in this country.

The solution to this and related problems would not be difficult. The NSC should enlist the assistance of half a dozen counterintelligence experts, preferably retired, each of whom has had at least 20 years experience here or abroad in major counterintelligence assignments, and put them to work reviewing all definitions used in official documents in the recent past against what they know to be the *needs* of thoroughgoing counterintelligence authority. They would have the answer in a few days, particularly when you consider that the addition of terms such as "subversion" or "subversive activities" might be all that is needed to correct the deficiency, because such terms would embrace all active measures.

The claim of some that the term "subversion" is too vague is rebutted by the fact that it was obviously not too vague for either the secret or open directives of FDR, for the public orders of several of his successors, for the Ford Executive Order, and has not been too vague for the Supreme Court.

The same group of experts should review the current foreign counterintelligence guidelines in their entirety for any provisions which they know might generally, or under certain circumstances, inhibit effective counterintelligence in some way. Once their work was completed, the guidelines could be readily amended to eliminate these barriers to effectiveness. Because the current guidelines are overwhelmingly secret, there would be no major political problem in changing them—as was demonstrated when the 1976 Levi guidelines were quietly changed several times before the new Civiletti guidelines were issued in 1980.

Importantly, the Department of Justice should be kept out of this project. Its aim is national security, not the administration of criminal or other laws. It is a job for intelligence specialists, not law enforcement attorneys. The Attorney General could be given the privilege of reviewing the finished project and submitting an opinion on it, just in case it might include some Constitutional or statutory violation (which is *most* unlikely), but his word should be only advisory; the final decision should rest with the NSC. Fortunately, in addition to being incorporated into some of its specific provisions, this is already the basic thrust of the Reagan order.

Regrettably, new domestic security "investigation" guidelines must be promulgated. They should be keyed to the fact, recognized by the Supreme Court in *Keith* and other decisions, that *domestic subversion is a national security matter* and that the objective of its investigation is not criminal prosecution, but the acquisition of knowledge that will make possible the adoption of effective countermeasures when they are deemed necessary. They should also recognize the unpleasant fact that mass, organized disloyalty is a reality, a reality often difficult to distinguish from honest, vigorous (sometimes violent) dissent, but that the ability to make this distinction is one of the most important (as well as most difficult) in the domestic intelligence field. This fact alone makes the criminal standard completely inappropriate.

These guidelines, again, should be the work of specialists and experts working under NSC direction, not the work of Justice Department lawyers—because the object of such guidelines, like those of foreign counterintelligence, is national security. Because they will

affect Americans much more extensively than the foreign counterintelligence guidelines will, the attorney general should have a larger voice in their final form. The attorney general, however, is merely this nation's chief law enforcement officer. Its chief security authority—with the exception of the President—is the NSC. It should have the final word on the matter.

Basically, the elimination of the counterintelligence problems outlined herein, as well as others, rests with two institutions—Congress and the White House. To date, the White House has shown the greater disposition toward correcting the evils that have crept into the practice of counterintelligence to such a degree that they have now become real impediments to genuine national security. More citizen pressure on the White House exerted by both individuals and organizations, can do much to encourage it to take additional steps along the positive path it has already chosen.

Congress, with its 535 members, is a much larger problem, particularly since some of its members have for years demonstrated their opposition to effective intelligence/counterintelligence policies and practices. The people, however, control those who sit in Congress and what they do just as much as they control the occupant of the White House and his actions. Greater and more effective pressure must be brought to bear on all representatives and senators.

Intelligence may rule the world, but in a democratic nation the people rule intelligence. The American people have allowed American counterintelligence to fall into its present weakened condition. It is up to them to see that it is restored to a condition worthy of this nation—and capable of adequately protecting their security.

No one has taken from them the two weapons they need to do this— *education* of themselves and their fellow citizens, and *action* based on that education.

The only real need is effective use of these two weapons.

Footnotes

Abbreviations

Church Committee — Select Committee to Study Governmental Operations with Respect to Intelligence Activities, United States Senate.
C.R. — Congressional Record
HAC Subcommittee — Subcommittee on the Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies, Committee on Appropriations, House of Representatives. (NOTE — All relevant hearings held by this subcommittee have been titled *Departments of State, Justice, and Commerce, the Judiciary, and Related Agencies Appropriations for...* [appropriate year]. Both this title and the name of the subcommittee have been abbreviated by the designation "Hearings, HAC Subcommittee.")
HCUA — Committee on Un-American Activities, House of Representatives.
HIC — Permanent Select Committee on Intelligence, House of Representatives.
HJC — Committee on the Judiciary, House of Representatives.
SIC — Select Committee on Intelligence, United States Senate.
SISS — Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws, Committee on the Judiciary, United States Senate.
SJC — Committee on the Judiciary, United States Senate.
SSST — Subcommittee on Security and Terrorism, Committee on the Judiciary, United States Senate.

References

1. *Adequacy of United States Laws with Respect to Offenses Against National Security*, Special Subcommittee on Security Affairs, Senate Committee on Foreign Relations, 83rd Cong., 1st Sess., April 17, 1953, Committee Print, p. 1.

2. See Herbert Romerstein, *The World Peace Council and Soviet Active Measures* (Washington, D.C.: The Hale Foundation, 1983).

3. The CIA estimates that the Soviet Union spends $3.363 billion annually for propaganda and active measures operations.

4. John Barron, *KGB: The Secret Work of Soviet Secret Agents* (New York: The Reader's Digest Press, Bantam Books Edition, 1974), p. 109.

5. *Testimony of Gen. Walter Bedell Smith*, Hearing, HCUA, 82nd Cong., 2nd Sess., October 13, 1952, pp. 4285-4294.

6. *Ibid.*, p. 4292.

7. *Ibid.*, p. 4290.

8. *Ibid.*, p. 4294.

9. William C. Sullivan with Bill Brown, "Life with a Tyrant," *The Washington Post Magazine*, September 23, 1979, p. 17.

10. *Ibid.*, p. 20.

11. "CIA Roundtable," *The Washington Quarterly*, Vol. 1, No. 4, Autumn 1978, p. 33. (Transcript of panel discussion, March 24, 1978, at the Georgetown University Center for Strategic and International Studies.)

12. *Soviet Active Measures*, Hearings, HIC, 97th Cong., 2nd Sess., July 1982, p. 31.

13. J. C. Masterman, *The Double-Cross System*, Yale University Press, 1972, p. XII.

14. *Ibid.*, p. 186.

15. *Ibid.*, pp. 34, 35.

16. *Testimony of Wladyslaw Tykocinski*, Hearing, HCUA, 98th Cong., 2nd Sess., April 6, 1966, p. 873.

17. *Op. cit.*, p. 31.

18. *Foreign Influence—Weather Underground Organization (WUO)*, Federal Bureau of Investigation, August 20, 1976, p. 125.

19. *Intelligence Activities and the Rights of Americans*, Book II, Final Report, Church Committee, 94th Cong., 2nd Sess., April 26, 1976 (Sen. Rept. No. 94-755), p. 84.

20. *Intelligence Activities, Senate Resolution 21*, Hearings, Church Committee, 94th Cong., 1st Sess., Vol. 4, October 1975, p. 221.

21. *U.S. v. District Court*, 407 U.S. 297.

22. *CP v. SACB*, 367 U.S. 1, 96.

23. *Ibid.*, at 42.

24. *Ibid.*, Douglas dissenting, pp. 6, 7 (slip opinion).

25. *Ibid.*

26. Quoted in Louis Nizer, *The Implosion Conspiracy*, Doubleday and Co., Inc., 1973, Fawcett Crest edition, p. 400.

27. Executive Order 11905, February 18, 1976, text as released by White House, Sec. 2(a)(2) and Sec. 4(g)(1).

28. E. O. 12036, January 24, 1978, Sec. 4-202, and E. O. 12333, December 4, 1981, Part 3.4(a), White House release texts.

29. *Congressional Record*, July 14, 1977, p. H7105, House Rule XLVIII, 10(a)(2) and *Annual Report to the Senate*, SIC, 95th Cong., 1st Sess., (Sen. Rpt. No. 95-217), May 18, 1977, p. 2.

30. *Foreign and Military Intelligence*, Church Committee, Final Report, Book I, 94th Cong., 2nd Sess., April 26, 1976 (Sen. Rept. No. 94-755), p. 163.

31. *Annual Report*, HIC, 95th Cong., 2nd Sess., October 14, 1978 (House Rept. No. 95-1795), pp. 37, 60, 61.

32. *Annual Report, Fiscal Year 1961*, Report of John Edgar Hoover, Director, Federal Bureau of Investigation, U.S. Department of Justice, p. 23.

33. *FBI Annual Report, Fiscal Year 1962*, Report of John Edgar Hoover, Director, Federal Bureau of Investigation, U.S. Department of Justice, p. 25.

34. *FBI 1962 Appropriation*, testimony of Hoover before House Appropriations Subcommittee, March 6, 1961, as reprinted and released by FBI, June 5, 1961, p. 49.

35. *Ibid.*, pp. 48-51.

36. *1963 FBI Appropriation*, testimony of Hoover before House Appropriation Subcommittee, January 24, 1962, as reprinted and released by FBI July 12, 1962, p. 55.

37. *Haig v. Agee*, June 29, 1981, slip opinion, p. 26.

38. *Op. cit.*, pp. 4, 28.

39. *Op cit.*, p. 24.

40. *New York Times*, August 2, 1971, p. 13.

41. *Nomination of William J. Casey*, Hearing, SIC, 97th Cong., 1st Sess., January 13, 1981, p. 40.

42. *Nomination of Admiral B. R. Inman*, Hearing, SIC, 97th Cong., 1st Sess., February 3, 1981, p. 9.

43. *Nomination of John N. McMahon*, Hearing, SIC, 97th Cong., 2nd Sess., May 26, 27, 1982, p. 43.

44. *Op. cit.*, footnote 11, p. 33.

45. *Report to the Senate*, SIC, 96th Cong., 1st Sess., May 14, 1979, p. 40 (Sen. Rept. No. 96-141).

46. The working group included the CIA, DIA and NSA, as well as DoD's National Reconnaissance Office, the Bureau of Intelligence and Research of the Department of State; intelligence elements of the Army, Navy, Air Force, Marine Corps, FBI, and Treasury and Energy Departments; plus staff elements of the Director of the CIA.

47. See footnote 31.

48. *Op. cit.*, Sec. 2(a)(2).

49. *Op cit.*, Sec. 4-202.

50. Ref. footnote 12, pp. 26, 28.

51. *Op. cit.*, Sec. 3.4(a).

52. *Laird v. Tatum*, 408 U.S. 1.

53. *Domestic Security Investigations*, Sec. I. A., official text as released by Department of Justice, March 10, 1976.

54. *Ibid.*, I. A. (1)-(4).

55. *The Attorney General's Guidelines on General Crimes, Racketeering Enterprise and Domestic Security/Terrorism Investigations*, Sec. III, B. 1. a., official text as released by Department of Justice, March 7, 1983.

56. *Ibid.*, Sec. III. B. 2.

57. *Legislative and Administrative Reform*, Hearings, House Select Committee on Assassinations, 95th Cong., 2nd Sess., December 1978, Vol. 1, p. 44.

58. *H.R. 6588, The National Intelligence Act of 1980*, Hearings, HIC, Subcommittee on Legislation, 96th Cong., 2nd Sess., March & April, 1980, pp. 58, 78, 79.

59. *Op cit.*, p. 28.

60. Quoted in William R. Corson, *The Armies of Ignorance*, The Dial Press/James Wade, 1977, p. 269.

61. *Report to the President by the Commission on CIA Activities Within the United States*, June 1975, Manor Books edition, p. 129.

62. *Op. cit.*, I-304 & subsection (d).

63. *Op. cit.*, p. 46.

64. *FBI Oversight*, Hearings, HJC, Subcommittee on Civil and Constitutional Rights, 95th Cong., 1st Sess., June & November, 1977, Part 1, p. 25.

65. *Intelligence Activities, Senate Resolution 21*, Hearings, Church Committee, 94th Cong., 1st Sess., November & December, 1975, Vol. 6, pp. 314, 315.

66. "Edward Levi's Parting Blow at the FBI," *Human Events*, February 26, 1977, p. 5.

67. *Domestic Security (Levi) Guidelines*, Hearings, SSST, 97th Cong., 2nd Sess., June & August 1982, p. 76.

68. Official conference text, Department of Justice release, March 18, 1977, p. 29.
69. Official text, The Yale Law Journal Banquet, April 20, 1978, as released by Department of Justice, p. 4.
70. *Cole v. Young*, 351 U.S. 536.
71. Conference on Intelligence Legislation, Standing Committee on Law and National Security, American Bar Association, University of Chicago Law School, June 26-28, 1980, p. 39.
72. *Ibid.*, pp. 40, 41, 44.
73. *Ibid.*, pp. 44, 45.
74. Text as declassified, Sec. IX, B. 2. a., & B. 7.
75. Letter of John M. Harmon, Assistant Attorney General, Office of Legal Counsel, May 23, 1978.
76. Text as declassified and released, July 29, 1982, Sec. III. A. & G.
77. *Ibid.*, Sec. IV. A. 2.
78. Ref. footnote 57, p. 122.
79. *Ibid.*, p. 44.
80. *FBI Statutory Charter*, Hearings, SJC, 95th Cong., 2nd Sess., April 1978, Part 1, p. 63.
81. *Ibid.*
82. *Ibid.*
83. *Ibid.*
84. *Ibid.*, pp. 38, 39.
85. *Report to the Senate*, SIC, September 23, 1981 (Sen. Rpt. No. 97-193), p. 17.
86. Quoted in the Associated Press, January 13, 1976, and C.R. January 27, 1976, p. S. 550.
87. Ref. footnote 30, p. 340.
88. *Ibid.*, p. 337.
89. *Report [To accompany S. 2939] Authorizing Appropriations for Fiscal Year 1979 for Intelligence Activities...*, 95th Cong., 2nd Sess., April 19, 1978 (Rept. No. 95-744), p. 3, and C.R. June 6, 1978, p. H. 5019.
90. C.R., November 3, 1983, p. S15279, 15280.
91. *Ibid.*, p. S15280.
92. *Hearings*, HAC Subcommittee, 96th Cong., 1st Sess., Part 6, Department of Justice, March 1978, pp. 672, 673, and 96th Cong., 2nd Sess. Part 7, Federal Bureau of Investigation, April 1980, pp. 153, 171, 172.
93. Text of Remarks, White House release, July 16, 1983.
94. Text of Remarks, Department of Justice release, December 18, 1981, p. 7.
95. National Committee to Restore Internal Security, Hearings, Vol. III, February 15, 1980 statement, p. 77.
96. *Hearings*, HAC Subcommittee, 95th Cong., 2nd Sess., Part 6, Department of Justice, March 1978, p. 686 and *Department of Justice Authorization*, Hearings, HJC, March 1978, 95th Cong., 2nd Sess., pp. 612, 613.
97. Ref. footnote 85, p. 17.
98. *Pre-Employment Security Procedures of the Intelligence Agencies*, Hearings, HIC Subcommittee on Oversight, 96th Cong., 1st Sess., May and June 1979, p. 212.
99. Ref. footnote 95, p. 76.
100. "Espionage: The Dark Side of Detente," *Reader's Digest*, January 1978, p. 78.
101. William Colby, *Honorable Men*, Simon and Shuster, 1978, pp. 333, 390.
102. Reported in *U.S. News & World Report*, May 7, 1979, p. 27.
103. Ref. footnote 42, p. 19.
104. Ref. footnote 95.
105. Washington *Post*, March 27, 1977, p. A3.
106. *Terroristic Activity: International Terrorism*, Hearings, SISS, 94th Cong., 1st Sess., Part 4, May 1975, p. 205.
107. *Op. cit.*, Sec. 1-304(c).
108. Ref. footnote 85, p. 17.
109. *Op cit.*, Sec. 1.1(d).
110. Ref. footnote 71, p. 75.
111. *FBI Oversight and Authorization*, Hearings, SSST, 98th Cong., 1st Sess., February 1983, pp. 87, 88.
112. *Attorney General's Guidelines for Domestic Security Investigations (Smith Guidelines)*, Hearing, SSST, 98th Cong., 1st Sess., March 25, 1983, p. 71.
113. *Ibid.*
114. Ref. footnote 67, p. 89.
115. Naples (Fla.) *Daily News*, February 28, 1983 (reporting his remarks at a symposium sponsored by the local chapter of AFIO).
116. Quoted in *VFW Magazine*, May 1976, p. 30.
117. *The Assassination of Representative Leo J. Ryan and the Jonestown, Guyana Tragedy*. Report of a

Staff Investigative Group to the Committee on Foreign Affairs, U.S. House of Representatives, May 15, 1979, p. 21.

118. *Ibid.*

119. C.R. February 2, 1980, p. S.1335.

120. *Implementation of the Foreign Intelligence Surveillance Act of 1978; 1979-1980*, SIC report, October 30, 1980, p. 10.

121. *Hearings*, HAC Subcommittee, 97th Cong., 1st Sess., Part 6, Department of Justice, April 2, 1981, p. 983.

122. "Urgently Needed: New Reagan Intelligence Directive," *Human Events*, March 21, 1981, p. 8.

123. *Op. cit.*, Sec. 2.4(d).

124. *Op. cit.*

125. *Op cit.*, Sec. V. A. 2. b.

126. Ref. footnote 71.

127. Notes taken at meeting by author.

128. Ref. footnote 27, Sec. 4(g) and Sec. IIA of guidelines as declassified, May 1978.

129. *CP v. SACB*, 367 U.S. 1, 96.

130. *Op. cit.*, Sec. I. B.

131. Ref. footnote 30, p. 174.

132. *Op. cit.*, Sec. II, (q).

133. *First Principles*, January 1977, pp. 4, 5.

134. Public Law 95-511, October 25, 1978, Sec. 102 (a)(1)(A) & (B); Sec. 105 (d)(1) & (2).

135. *Analysis of Church Committee Report*, by Society of Former Special Agents of the FBI, Inc., 1977, pp. 4, 5.

136. *Foreign Intelligence Electronic Surveillance*, Hearings, HIC Subcommittee on Legislation, 95th Cong., 2nd Sess., January and February, 1978, p. 124.

137. *The Intelligence Oversight Act of 1980*, Report to accompany H.R. 7668, HIC, July 2, 1980 (House Rpt. 96-1153, Part 1), p. 29.

138. *Implementation of the Foreign Intelligence Surveillance Act*, Report, HIC, 96th Cong., 2nd Sess., November 17, 1980 (House Report No. 96-1466), pp 4,5, adn SIC report on same subject, October 30, 1980 (Senate Rpt. No. 96-1017), pp. 6-9.

139. Ibid., House report, p. 25.

140. Same titled reports, 97th Cong., 1st Sess., HIC, November 12, 1981, (House Rpt. No. 97-318), p. 8 and SIC, November 24, 1981 (Sen. Rpt. No. 97-280), p. 16.

141. *Washington Post*, June 10, 1983.

142. Ref. footnote 140 Senate report, p.5.

143. Ibid., pp. 5,6.

144. Ref. footnote 139.

145. Ref. footnote 138: both reports, pp. 5.6.

146. Ref. footnote 138, House report, p. 5.

147. Ref. footnote 80, p. 38.

148. Op. cit., Sec. 101 (b)(2)(A) & (B).

149. Ibid., Sec. 105 (a)(3)(A).

150. Ibid., Sec. 105 (d)(2).

151. *Supplementary Detailed Staff Reports on Intelligence Activities and the Rights of Americans.* Final Report, Church Committee 94th Cong., 2nd Sess., April 23, 1976, Book III (Sen. Rpt. No. 94-755), p. 301.

152. *Washington Post*, June 10, 1983.

153. *Postal Inspection Service's Monitoring and Control of Mail Surveillance and Mail Cover Programs*, Hearings, Committee on Post Office and Civil Service, Subcommittee on Postal Facilities, Mail, and Labor Management, 94th Cong., 1st Sess., May, July, October, November, 1975, p. 172.

154. Ibid., p. 173.

155. *FBI Domestic Intelligence Operations: An Uncertain Future*, Report of the Comptroller General of the United States, November 9, 1977, p. 14.

156. *Dennis v. U.S.*, 183 F.2d 201.

157. *Handschu v. Special Services*, 349 F. Supp. 766, 769.

158. *The Report of the President's Commission on Campus Unrest*, September 1970, p. 5/41.

159. *Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations*, memorandum, Edward H. Levi, Attorney General to Clarence M. Kelley, Director, Federal Bureau of Investigation, December 15, 1976, Sec. B., 1. & 4.

160. Ibid., Sec. B.

161. Ref. footnote 66.

162. Ref. footnote 57, p. 45.

163. Ref. footnote 151, p. 260.

164. Ref. footnote 80, p. 64.

165. Official text, American Newspaper Publishers Association, Atlanta, May 3, 1978, p. 15.

166. *Hearings*,HAC Subcommittee 96th Cong., 1st Sess., Part 5, Department of Justice, Federal Bureau of Investigation, March 20, 1979 testimony, p. 943.

167. *Hearings*, HAC Subcommittee, 96th Congress, 2nd Sess., Part 7, Department of Justice, Federal Bureau of Investigation, April 20, 1980 testimony, p. 170.

168. *FBI Oversight*, Hearings, HJC Subcommittee on Civil and Constitutional Rights, 96th Cong., March 1979 and March 1980, p. 6.

169. *Attorney General's Guidelines on FBI Use of Informants and Confidential Sources*, Office of the Attorney General, December 2, 1980, Sec. E. (1).

170. *Justice Department Internal Investigation Policies*, Hearings, Subcommittee of House Committee on Government Operations, 95th Cong., 1st Sess., June and July, 1977, p. 157.

171. Ref. footnote 64, p. 222.

172. Ref. footnote 165, p. 7, and *Washington Post*, March 23, 1979.

173. Ref. footnote 155 pp. 16, 24 and 45.

174. *Report of the Subcommittee on Security and Terrorism to the Committee on the Judiciary on the Activities Undertaken During the 97th Congress and the Program for the First Session of the 98th Congress*, undated SSST release distributed in January 1983, p.2.

175. *The Erosion of Law Enforcement Intelligence—Capabilities—Public Security*, Hearings, SJC Subcommittee on Criminal Laws and Procedures, 95th Cong., 1st Sess., Part 1, July and September 1977, pp. 30–32.

176. *Washington Post*, April 12, 1981.

177. *Management Review on the Performance of the U.S. Department of the Treasury in connection with the March 30, 1981 Assassination Attempt on President Ronald Reagan*, Department of the Treasury, Office of General Counsel, August 1981, p. 37.

178. Ref. footnote 98, pp. 194, 195.

179. A hearing on terrorism, transcript not published, HIC, 95th Cong., 2nd Sess., July 31, 1978.

180. *FBI Oversight Hearing* Hearing, SSST, 97th Cong., 2nd Sess., February 4, 1982, p. 19.

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